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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1940

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS

v.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AMICUS CURIAE

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OPINION BELOW

The opinion of the United States District Court for the Middle District of Pennsylvania (R. 20–32) is reported in 30 F. Supp. 470.

JURISDICTION

The judgment of the United States District Court for the Middle District of Pennsylvania was entered November 30, 1939 (R. 32–33). The appeal (R. 34–35) was filed on February 7, 1940, and

the order allowing the appeal (R. 37) was entered on February 8, 1940. Probable jurisdiction was noted by this Court on March 25, 1940. The jurisdiction of this Court rests on Section 266 of the Judicial Code, as amended.

QUESTIONS PRESENTED

The only questions discussed in this brief are:

1. Whether the Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939; Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806), has been superseded by the federal Alien Registration Act of 1940 (Pub., No. 670, 76th Cong., 3d Sess., c. 439).

2. Whether the states have power to require the registration of resident aliens in the absence of express congressional consent.

3. Whether the Pennsylvania statute violates the provisions of Section 16 of the Civil Rights Act of 1870 (R. S. § 1977, 8 U. S. C. § 41).

STATUTES INVOLVED

The provisions of the Pennsylvania Alien Registration Act are set forth in Appendix A, *infra*, pp. 50–53.

The provisions of Title III of the federal Alien Registration Act of 1940 are set forth in Appendix B, *infra*, pp. 54–59.

STATEMENT

Proceedings below.—On June 21, 1939, the Commonwealth of Pennsylvania adopted an act "requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon

proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties." Section 1 provides that during December 1939, and each year thereafter, aliens over eighteen years of age residing in Pennsylvania must register with the State Department of Labor and Industry. Several items of information to be required from registrants are specified, and the Department is given authority to require "other information and details." Certain classes of aliens, notably those residing continuously in the United States since 1909 without being convicted of a crime, are exempted. Section 2 establishes a registration fee of $1, and requires a registered alien to carry, and to exhibit on proper demand, an "alien identification card." Section 3 prohibits the registration of an automobile in the name of any alien and forbids the issuance of a driver's license to any nonexempt alien who fails to produce an identification card. Section 4 provides for the administration of the Act, and authorizes the Department of Labor and Industry to promulgate and enforce rules and regulations for its enforcement. Sections 5 and 6 impose penalties for violations and prescribe enforcement procedures.

Shortly after the enactment of the statute, the appellees brought this action "on behalf of themselves and * * * of all other residents or citizens or taxpayers who may lawfully join herein,"

in the United States District Court for the Middle District of Pennsylvania, to enjoin the defendant officers of the state from enforcing the Act (R. 3–13). The complaint invoked the jurisdiction of the district court under Section 24 (14) of the Judicial Code and under Section 266 of the Judicial Code, providing for a three-judge statutory court (28 U. S. C. §§ 41 (14), 380). Plaintiff Davidowitz alleged that he was a naturalized citizen, of foreign appearance and speaking English with a noticeable foreign accent, that, notwithstanding the limitation of the Act to aliens, he would be subject to constant questioning and harassment because of his appearance, and that his right of privacy would be invaded (R. 6, 9). Plaintiff Travaglini alleged that he was an alien subject to the Act (R. 4, 7), that the statute trenched upon the exclusive jurisdiction of Congress to regulate immigration and aliens, and that it was in violation of the due process and equal protection clauses of the Fourteenth Amendment (R. 5–7). The statute was also attacked as violative of various provisions of the state constitution (R. 6). The complaint averred that appellants intended to enforce the Act and that the appellees were threatened with irreparable injury (R. 9–10). The prayer was for a preliminary and final injunction (R. 11).

The answer (R. 14–17) admitted the material facts stated in the complaint but denied that the

Pennsylvania Alien Registration Act was unconstitutional. Appellants also alleged that Davidowitz, being a citizen of the United States and a resident of Pennsylvania, could not invoke the jurisdiction of the court (R. 14, 17).

Appellees then moved for judgment on the pleadings, pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure (R. 18–19). A court of three judges was convened pursuant to Section 266 of the Judicial Code. After hearing, this statutory court, in an opinion by Circuit Judge Biggs, held that the statute was invalid because it purports to operate in a field reserved to Congress and in which the states are without authority to legislate, and also because it denies aliens equal protection of the laws in violation of the Fourteenth Amendment (R. 20–32). Davidowitz, however, was held to have no standing to sue, since the statute did not invade the rights of citizens. A perpetual injunction against enforcement of the Act was granted (R. 32–34).

Alien Registration Act of 1940.—On June 28, 1940, after the decree had been entered and an appeal therefrom taken to this Court, Congress enacted the Alien Registration Act of 1940, establishing a comprehensive federal alien registration system. Title III of this Act provides for the registration and fingerprinting of all aliens fourteen years of age or older now or hereafter in the United States who do not register before entering the country and who remain here for thirty

days or longer. Sec. 31 (a). Parents or guardians of aliens less than fourteen years old are required to apply for the registration (but not fingerprinting) of such aliens. Sec. 31 (b). Provision is also made that aliens hereafter seeking to enter the United States must be registered and fingerprinted before receiving visas. Sec. 30. Special regulations are authorized with respect to certain designated classes of aliens requiring separate treatment. Sec. 32 (c). Only foreign government officials and members of their families are exempted. Sec. 32 (b).

The Commissioner of Immigration and Naturalization is authorized to prepare registration forms containing inquiries "with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General."

Registered aliens resident in the United States are required to notify the Commissioner of each change of residence within five days, and other registered aliens, such as visitors, are required to give notice of their address "at the expiration of each three months' period of residence in the United States." Penalties are prescribed for wil-

ful failure or refusal to comply with any of the statutory requirements. Sec. 36.

The Commissioner has promulgated detailed regulations for the administration and enforcement of the Act (Code of Federal Regulations, Title 8, Part 29, 5 Fed. Reg. 2836) and has established a comprehensive system of registration procedures. The actual registration and fingerprinting of aliens at the various post offices throughout the country began on August 27 of this year and will continue through December 26.

INTEREST OF THE UNITED STATES

The Alien Registration Act of 1940 establishes a complete and integrated federal system for the registration and fingerprinting of aliens. The registration and fingerprinting of aliens under this Act are now taking place. Administration of the Act, however, will be embarrassed and impeded if the various states are allowed to legislate in the same field, whether the legislation be similar to or in conflict with the federal law. Policies adopted by those charged with administering the federal law cannot be fully effectuated if opposing policies are adopted by those administering the state law, no matter how similar the two statutes may be on their face. The deliberate purpose of Congress to protect the civil liberties of aliens will be thwarted if the states are permitted to administer registration laws, like that of Pennsylvania, which fail to pro-

vide comparable safeguards. And the effect of subjecting aliens to a dual registration system must necessarily be to create confusion and resentment in their minds and thus to make more difficult of achievement the Congressional policy embodied in the federal statute.

The United States, therefore, has a direct interest in the present litigation. It is the position of the United States that the regulation of alien registration is exclusively the concern of the federal government, that state regulation in this field is invalid in the absence of express consent by Congress, and that, far from consenting to state legislation, Congress, by enacting the Alien Registration Act, exercised its authority to the entire exclusion of the states.

SUMMARY OF ARGUMENT

1. The Alien Registration Act of 1940, enacted by Congress subsequent to the entry of the decree below, has superseded the Pennsylvania registration statute. The federal act is a comprehensive law on the subject of the registration and identification of aliens; the Pennsylvania statute, rather than complementing the federal law, covers almost precisely the same ground. Although the obligations of the alien under the Pennsylvania statute are not necessarily incompatible with his obligations under the federal law, the full occupation of the field by Congress precludes enforcement of the state legislation.

The purposes of the federal statute can be fully achieved only by continuous centralized administration. If the states be permitted to administer independent statutes, the probable consequence would be to confuse aliens as to their duties under each of the separate enactments, with their different provisions, different regulations and different methods of administration. Confusion would, indeed, be worse confounded because of the fact that, unless local legislation is precluded, many municipalities and counties would in all likelihood establish registration requirements in addition to those prescribed by the states.

Moreover, the administration of the Pennsylvania statute might well conflict with the Congressional policy embodied in the federal law. The legislative background of the federal act shows that Congress was well aware that the registration device is susceptible of being used as a means of curtailing the liberties of loyal and law-abiding aliens and that, if so used, it would increase rather than minimize the evils of disaffection and disloyalty against which the Act is directed. Accordingly, Congress provided various safeguards in the Act to protect the civil liberties of aliens and to guard them against the harassment of intrusive police surveillance. The Pennsylvania statute contains no similar safeguards; to the contrary, it is fraught with the very dangers which Congress sought to prevent.

Even if the Pennsylvania statute contained all of the safeguards embodied in the federal Act, it

would be still be invalid as in conflict with the policy of Congress. Enforcement of the Congressional purpose to protect the civil liberties of aliens requires that the federal government retain the power to control and coordinate all activities of the officers in charge of registration and surveillance; this policy cannot be enforced if the states are permitted to enact and administer independent registration systems, whether for purely local ends or for some purpose which the states share in common with the nation.

2. Even apart from the effect of the Alien Registration Act of 1940, the states may not require the registration of alien residents without the express consent of Congress. Registration cannot be considered independently of the many other aspects of alien control. Title 8 of the United States Code contains a comprehensive and integrated system of immigration and naturalization laws and provides for the protection of the civil rights of aliens residing within our borders. The registration of aliens is part of the same field of regulation. It permits the federal government to ascertain the number of aliens illegally admitted and thus to determine the effectiveness of the immigration laws; it serves to reveal the presence of aliens abusing our hospitality and thus subject to deportation; and it results in the accumulation of a mass of information of great value in the framing of future naturalization laws and policies.

The state shares none of these interests. The purpose of its statute is simply to guard against subversive activities. While legislation directed toward the accomplishment of this end might be valid if imposed on all persons under the jurisdiction of the state, an entirely different question is presented when, in order to curb subversive activities, the state seeks to concern itself with the special problem of alien control. This special problem is one to which the Congress has specifically addressed its attention in the enactment of the immigration and naturalization laws. Further, it is one which must be reserved exclusively for federal action because it is directly related to the conduct of our foreign relations. The very reason for singling out aliens for control is the fact that their allegiance is to foreign governments. As in the case of the immigration and naturalization laws, therefore, control of subversive activities of aliens, as such, cannot be divorced from control of the foreign policies of the United States. And because the formulation and enforcement of foreign policy is a matter of exclusively national concern, it is Congress alone which may legislate with respect to the related matter of alien control.

Moreover, the question whether the value of a registration system for aliens is worth whatever risk of disloyalty or disaffection it might cause is a matter of national policy, to be determined by Congress. Before the enactment of the Alien Reg-

istration Act, it was the national policy to leave aliens free of such regulation; since the enactment of that statute, the policy has been otherwise. But plainly, the question being one of national policy, its determination is for Congress and not for the states.

The invalidity of the Pennsylvania statute is emphasized by the principle enunciated by this Court in *Truax* v. *Raich*, 239 U. S. 33, 39, that an alien admitted to the United States under federal law is admitted "with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." The Pennsylvania law would of necessity have a tendency to deter aliens from entering and abiding in the state, and this, as the court below concluded, may well have been one of its purposes. Such a limitation on the exercise of the alien's privilege, conferred by federal law, is no less invalid than an absolute prohibition.

3. The Pennsylvania statute is also invalid because it is in conflict with Section 16 of the Civil Rights Act of 1870, now appearing as Section 1977 of the Revised Statutes (8 U. S. C. § 41). This statute was enacted by Congress pursuant to the authority granted by Section 5 of the Fourteenth Amendment, to enforce the provisions of the amendment by appropriate legislation. R. S. § 1977 provides that all persons within the jurisdiction of the United States shall enjoy the same civil rights as

white citizens. The language of the statute, its legislative history, and the decisions construing it leave no doubt that its protection extends to aliens as well as to citizens. And the legislative history shows specifically that the statute was intended, among other things, to establish absolute equality with respect to freedom of movement. Since the Pennsylvania statute imposes a different system of regulation for aliens than for white citizens, and since it restricts the alien's freedom of movement, it is in contravention of R. S. § 1977.

ARGUMENT

I

THE ALIEN REGISTRATION ACT OF 1940 HAS SUPERSEDED THE PENNSYLVANIA REGISTRATION STATUTE

The court below held the Pennsylvania statute to be invalid because it sought to regulate a matter of exclusively national concern and because it unlawfully restricted the privilege to enter and abide in each of the states which Congress conferred on aliens when it permitted their admission. The decision of the court below was correct, as we show under Point II.

After entry of the judgment of the court below, Congress enacted the Alien Registration Act of 1940. It is our position that, entirely independent of the reasons for the invalidity of the Pennsylvania statute considered decisive by the court below, enforcement of the state act is precluded by

the enactment of the federal statute covering the same field.[1]

1. The power of Congress to provide by statute for the registration of resident aliens is not and cannot be questioned. Ample authority may be found in the plenary power of Congress to regulate the admission of aliens to the United States and to prescribe the conditions upon which they may be permitted to remain (*Head Money Cases*, 112 U. S. 580, 591, *et seq.*; *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 272–273; *Chy Lung* v. *Freeman*, 92 U. S. 275, 280; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713–714)[2] or

[1] The effect of the federal act on the validity of the state statute may, and indeed must, be considered by this Court even though the Congressional enactment was adopted subsequent to the date the appeal was taken and probable jurisdiction noted. *Carpenter* v. *Wabash Ry. Co.*, 309 U. S. 23, 26–27; *United States* v. *The Schooner Peggy*, 1 Cranch 103, 110; *Watts, Watts & Co., Ltd.*, v. *Unione Austriaca di Navigazione*, 248 U. S. 9, 21; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Dennis*, 224 U. S. 503, 505–506; *Crozier* v. *Fried, Krupp Aktiengesellschaft*, 224 U. S. 290, 302–303; *Dinsmore* v. *Southern Express Co.*, 183 U. S. 115, 120.

[2] This Court has indicated several sources of the power to regulate the admission and residence of aliens. *United States ex rel. Turner* v. *Williams*, 194 U. S. 279, 290. It may be founded on the grant of power to regulate foreign commerce (*cf. Head Money Cases*, 112 U. S. 580, 591; *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 270–274), or on the power to conduct the foreign relations of the United States (*cf. Chy Lung* v. *Freeman*, 92 U. S. 275, 279–280; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 711–712;

in the power to establish uniform naturalization laws (Art. I. sec. 8, cl. 3),[3] or, as the current crisis in international affairs serves to emphasize, in the power to provide for the national defense. Whatever the constitutional basis, however, the validity of such legislation has long been settled. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 714, 726.

The power, if any, of the states to enact similar legislation is at best subordinate to that of Congress and, in the absence of express Congressional consent, exercise of the power is necessarily precluded (see Point II, *infra* pp. 31–43). Here, far from giving its consent to state action, Congress has provided for full federal occupation of the field by enacting the Alien Registration Act.

2. The Alien Registration Act contains no express provision prohibiting the enactment of state legislation on the same subject, and it may be admitted that the Pennsylvania statute does not

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Nishimura Ekiu v. *United States*, 142 U. S. 651, 659), or it may arise as an incident of the sovereignty of the United States (*cf. Chae Chan Ping* v. *United States*, 130 U. S. 581 603–609; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 705, 711; *Wong Wing* v. *United States*, 163 U. S. 228, 231; *Fiaco* v. *Forbes*, 228 U. S. 549, 556–557; *Mahler* v. *Eby*, 264 U. S. 32, 39).

[3] The existence of a requirement of registration may stimulate aliens to become citizens (86 Cong. Rec., June 22, 1940, at 13467), and the information acquired in the administration of a registration system may be useful in framing amendments to the present naturalization laws.

directly conflict with the terms of the federal law. But the subject matter of the Congressional act, the type and extent of the federal regulation, the surrounding circumstances, and the necessary effect of dual legislation, disclose an unmistakable purpose of Congress to occupy the field and to preclude legislation by the states on the same subject.

The federal statute is a comprehensive law on the subject of the registration and identification of aliens; the Pennsylvania statute, rather than complementing the federal law, covers almost precisely the same ground. There are, of course, differences in the statutes: the exemptions and the penalties differ, and the state act does not expressly envisage fingerprinting, while the federal act does not require registered aliens to carry identification cards. But the general objectives of the statutes are identical, and both are systematic and complete regulations of the subject. The federal act is as general in its application as the state law, and there are no exemptions from its coverage which might constitute a legitimate subject of separate state regulation. And the scope of the information which may be obtained from registrants is as broad under the federal statute as under that of the state.

The enactment by Congress of this comprehensive and integrated alien registration system precludes the exercise of any concurrent authority by the states. *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59, 63; *Reid* v. *Colorado*, 187

U. S. 137, 146–147; *Easton* v. *Iowa*, 188 U. S. 220, 23[illegible], 238; *Oregon-Washington Rd. & Navig. Co.* v. *Washington*, 270 U. S. 87, 99–101; *Erie R. R. Co.* v. *New York*, 233 U. S. 671; *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 505–506; *Northern Pac. Ry. Co.* v. *Washington*, 222 U. S. 370; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147; *Second Employers' Liability Cases*, 223 U. S. 1, 55; *Lindgren* v. *United States*, 281 U. S. 38, 45–46; *New York Central & Hudson River R. R.* v. *Hudson County*, 227 U. S. 248, 263–264; *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439; *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265-266; *Gavit, The Commerce Clause*, § 117. It is immaterial that the obligations of the alien under the federal and Pennsylvania enactments are not necessarily incompatible. As Mr. Justice Holmes observed in *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604, "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition * * *." [4] And it is likewise imma-

[4] Accord: *People* v. *Compagnie Generale Transatlantique*, *supra*; *Erie R. R. Co.* v. *New York*, *supra*; *New York Central R. R.* v. *Winfield*, *supra*; *New York Central & Hudson R. R. Co.* v. *Tonsellito*, 244 U. S. 360; *Southern Ry.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446–448; *Pennsylvania R. R. Co.* v. *Pub. Serv. Comm.*, 250 U. S. 566, 569; *Missouri Pacific R. R. Co.* v. *Porter*, 273 U. S. 341, 346; *Gilvary* v. *Cuyahoga Valley Ry.*, 292 U. S. 57, 60–61; *cf. Gulf, Colorado & Santa Fe Ry.* v. *Hefley*, 158 U. S. 98, 105.

terial that the state law was enacted before the federal law; once the federal government occupies the field, existing state legislation is superseded and further state legislation is prevented. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446, 447; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59, 63; *Port Richmond, etc., Ferry Co.* v. *Board of Chosen Freeholders*, 234 U. S. 317, 330; *Southern Ry Co.* v. *Reid*, 222 U. S. 424.

The decision in *People* v. *Campagnie Generale Transatlantique, supra*, would seem to be controlling. In that case, this Court held invalid one of the series of New York statutes imposing taxes upon alien immigrants entering the Port of New York, upon the ground, *inter alia*, that the federal Act of August 3, 1882, c. 376, 22 Stat. 214, imposing a similar tax upon immigrants, "covers the same ground as the New York statute, and they cannot coexist."

The case of *Gilbert* v. *Minnesota*, 254 U. S. 325, is not opposed. In that case this Court held that the Espionage Act of June 15, 1917, did not supersede a war-time statute of Minnesota imposing criminal penalties for discouraging enlistment in the armed forces of the United States. The decision was placed upon the ground that the states have an interest in promoting the national security and that the state statute was merely in aid of the

federal purposes. *Id.* at 331. The case can have no application to a situation like that here presented, where enforcement of the federal statute requires continuous centralized administration and any independent and uncoordinated effort by state officials to aid in its enforcement could only result in chaos and confusion. See *infra*, pp. 26–28.

3. Not only is the Pennsylvania statute unenforceable because its field of operation is fully occupied by the Alien Registration Act, but it is also unenforceable because it is in conflict with the Congressional policy embodied in the federal law. The legislative background of the Act shows that Congress was well aware that the registration device is susceptible of being used as a means of curtailing the liberties of loyal and law-abiding aliens and that, if so used, it would increase rather than minimize the evils of disaffection and disloyalty against which the Act is directed. Accordingly Congress provided various safeguards in the Act to protect the civil liberties of aliens and to guard them against the vexation of intrusive police surveillance. The Pennsylvania statute contains no similar safeguards; to the contrary, it is fraught with the very dangers which Congress sought to prevent.

Since at least 1917, bills providing for the registration of aliens have been regularly introduced

in every Congress.[5] Notwithstanding some official support,[6] every such proposal was rejected by Congress prior to the adoption of the Alien Registration Act of 1940, most of them dying in committee.[7] There can be no doubt that the basis for the

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[5] 64th Cong., 2d Sess.: H. R. 20936.
65th Cong., 1st Sess.: H. R. 4959; 3d Sess.: H. R. 13445.
66th Cong., 1st Sess.: H. R. 3911; H. R. 563.
67th Cong., 2d Sess.: S. 2882, S. 3403, H. R. 10860; 4th Sess.: H. R. 13417, H. R. 14430.
68th Cong., 2d Sess.: H. R. 10469, H. R. 11887.
69th Cong., 1st Sess.: H. R. 102, H. R. 5583.
70th Cong., 1st Sess.: H. R. 5473; 2d Sess., S. 5093 (voluntary registration).
71st Cong., 1st Sess.: S. 1278 (voluntary registration); 2d Sess.: H. R. 9101, H. R. 9147, H. R. 10207.
72d Cong., 1st Sess.: H. R. 10669; 2d Sess.: H. R. 14712.
73d Cong., 1st Sess.: H. R. 2841.
74th Cong., 1st Sess.: H. R. 9175; 2d Sess.: H. R. 11740, H. R. 11172, H. R. 12652.
75th Cong., 1st Sess.: H. R. 1-1, H. R. 1980, H. R. 4355, S. 1364; 2d Sess.: S. 3154.
76th Cong., 1st Sess.: H. R. 130, H. R. 3392, H. R. 5138, H. R. 5196, H. R. 7379; S. 408, S. 1470, S. 2632, S. 2830.

[6] Secretary of Labor, Annual Report for year ending June 30, 1922; Secretary of Labor, Annual Report for year ending June 30, 1925, pp. 119–120; Commissioner General of Immigration, Annual Report for year ending June 30, 1925, pp. 13, 26; *cf.* Kohler, *The Registration of Aliens* (1926), pp. 3, 4, 22, 33, 40, 46, 89 (citing approval by Presidents Harding and Coolidge).

[7] S. 5093, 70th Cong., 2d Sess., providing for so-called voluntary registration of aliens, was passed by the Senate, almost without debate. 70 Cong. Rec. 2090. S. 1278, a similar bill introduced into the 71st Congress, was also passed without debate, 72 Cong. Rec. 7209, but the vote was immediately reconsidered, *ibid*, and the bill never came to a final test. See Kohler, *Immigration and Aliens in the United States* (1936), p. 366.

rejection of these proposals was the opposition, then current in and out of Congress, to all plans for the registration of aliens.[8] The action of Congress reflected a widespread conviction that registration was closely akin to the systems of police surveillance of certain European countries, and that to subject aliens to such surveillance might lead to grave abuses in administration[9] and engender disaffection and disloyalty.[10]

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[8] See comments of Representatives Celler and Sabath on the pigeonholing of the various registration bills, 70 Cong. Rec. 189, 190. *Cf.* Kohler, *The Registration of Aliens*, *passim*; Kohler, *Immigration and Aliens in the United States*, 340–391.

[9] See 87 Cong. Rec. 1675–6; 70 Cong. Rec. 189–190; 72 Cong. Rec. 3886–3893; *Hearings before Subcommittee of Senate Committee on Immigration on S. 1364*, 75th Cong., 1st Sess. (1937), 4 *et seq.* (letter of Secretary of Labor); Kohler, *The Registration of Aliens*, *passim*; Kohler, *Immigration and Aliens in the United States*, *supra*, 340–391. It was believed that the administration of alien registration statutes might involve undue harassment of aliens and even official corruption and other illegal practices. *Hearings*, *supra*; Kohler, *The Registration of Aliens*, *supra*, 30, 32, 43, 88–89, 92; Kohler, *Immigration and Aliens in the United States*, *supra*, 372, 373, 381, 384, 385. Reference was made to irregularities in the administration of the Chinese Registration Act of 1892. Kohler, *The Registration of Aliens*, *supra*, 22–25, 92, 130–132. It was also feared that interference with the rights of labor might result. *Hearings*, *supra*; Kohler, *The Registration of Aliens*, *supra*, 43, 61; Kohler, *Immigration and Aliens in the United States*, *supra*, 383, 386, 387, 388.

[10] See *Hearings before Subcommittee of Senate Committee on Immigration on S. 1364*, 75th Cong., 1st Sess. (1937), 4 *et seq.* (letter of Secretary of Labor); Kohler, *The Registration*

In enacting the Alien Registration Act of 1940, the Congress was careful to guard against these evils. The Act provides that the registration and fingerprinting shall be done at the Post Office (Section 33 (a)), thus avoiding any suggestion of police administration. There is no provision for the issuance of an identification card and no requirement that the alien shall carry with him proof of registration. The significance of this omission is emphasized by the regulations issued by the Commissioner of Immigration and Naturalization, which, after providing for the issuance of a receipt to the alien on registration, specifically state that the alien is under no duty or obligation to carry the receipt on his person and that he shall suffer no penalty or disadvantage from failing to do so, Code of Federal Regulations, Title 8, § 29.4 (p), 5 Fed. Reg. 2840. To insure that the Act will not be used to harass loyal aliens in the exercise of their civil liberties, the Congress expressly provided that all registration and fingerprint records shall be "secret and confidential" and shall be made available only to such persons as the Commissioner may designate, and then only with the approval of the Attorney General. Section 34 (b). Finally, Congress provided that the penalties of the Act may be invoked only in cases of "wilful" violations. Section 36.

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of Aliens, supra, 45 48, 73–75, 81–83, 84–85; Kohler, *Immigration and Aliens in the United States, supra*, 370, 389.

The Act thus embodies the deliberate judgment of Congress that the protection of the civil liberties of loyal and law-abiding aliens is a matter of national concern and that the harassment of such aliens is not only unnecessary to the national defense but would aggravate the dangers of disaffection and disloyalty which the statute was intended to suppress. The intention of Congress has been so construed in the administration of the Act.[11]

The Pennsylvania statute contains no similar protection of the rights of aliens and its provisions are susceptible of administration in a manner directly conflicting with the policy of Congress. The legislative history of the statute shows that it was

[11] The administrative officials in charge of federal registration have repeatedly cautioned against persecution, undue duress, or any action calculated to suggest that law-abiding and loyal aliens are unwelcome, and they have emphasized the danger of disaffection and disloyalty which could result from such action. See Statement of the President upon signing the Alien Registration Act, 1940; Message of the President to the Federal-State Conference on Law-Enforcement Problems of National Defense; Address of Attorney General Jackson to the Conference; Address delivered by Earl G. Harrison, Director of Registration, Immigration and Naturalization Service, over the radio, August 7, 1940; Address delivered by Lemuel B. Schofield, Special Assistant to the Attorney General in charge of the Immigration and Naturalization Service, delivered over the radio, August 15, 1940; Address delivered by Solicitor General Biddle over the radio, August 25, 1940; Address of Earl G. Harrison to the Philadelphia Council of Social Agencies, September 6, 1940. Mimeographed copies of these statements have been filed with the Clerk of this Court.

deliberately framed so as to facilitate police surveillance of aliens engaged in allegedly subversive activities (23 Pa. Legis. Jour. 807, 808, 809, 1339, 4709).[12] For this purpose all aliens not expressly exempted must register annually and furnish such information as the State Department of Labor and Industry may specify.[13] The information so obtained need not be treated as confidential; the state officials are free to collect a dossier concerning every alien and then make it available to employers, or to other persons without official interest, or to the public generally. To further the purpose of surveillance, all aliens not expressly exempt are subject to the irksome and harassing requirement of carrying an identification card at all times and of displaying it to the police authorities upon demand. Failure to register, to carry the identification card, or to produce the identification card upon proper demand is occasion for fine or imprisonment or both. And these criminal penalties may

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[12] Mr. Taylor, the principal sponsor of the bill in the House of Representatives, explained its purpose as follows: "If he [the alien] is a member of a subversive group, then we want to know where he is so that we can put a finger on him when we want him." See 23 Pa. Legis. Jour. 1339.

[13] While the statute does not expressly require notice of any change of address within the state during the year, there can be no doubt, in view of the purpose of the Act, that such a requirement could be imposed under the unlimited authority of the Department to make regulations for the enforcement of the Act.

be imposed, whether the violation is wilful or due to innocent neglect.[14]

It is apparent that under this statutory scheme, the alien residents of Pennsylvania are subject to the constant threat of intrusive surveillance by the state police. Whether or not aliens will frequently be required to display their identification cards and repeatedly be subjected to fine or imprisonment for failure to do so must depend upon the policy of the officers in charge of enforcement; under the statute, those officers have the power, if they will to exercise it, to subject aliens whom they may for any reason deem undesirable, to constant harassment. The Act might, of course, be used solely to curb subversive activities (see 23 Pa. Legis. Jour. 1339), but there is nothing in its terms to prevent its use as a means of curbing the legitimate activities of labor leaders or of other loyal and law-abiding aliens (see 23 Pa. Legis. Jour. 5189).

The extent of the restrictions imposed upon aliens by the state law must, of course, be measured not merely by the necessary operation of the statute, but also by what may be done under its authority. Cf. *Chy Lung* v. *Freeman*, 92 U. S. 275. The aliens

[14] The provision for penalizing negligent as well as wilful violations of the statute appears to have been deliberately framed. A provision of the bill as originally introduced, which imposed penalties for the employment of an unregistered alien, was expressly amended to apply only to "wilful" violations (see 23 Pa. Legis. Jour. 751–752).

subject to the Pennsylvania statute are a politically helpless minority, whose civil liberties Congress has determined must be protected against undue invasion in the interests of fair dealing and national security. The protection of the federal law, like the protection of the Bill of Rights in the federal Constitution, extends against state laws which authorize, as well as against those which require, undue intrusion upon such civil liberties. Cf. *Thornhill* v. *Alabama,* 310 U. S. 88; *Carlson* v. *California,* 310 U. S. 106.

Moreover, even if the Pennsylvania statute contained all of the safeguards embodied in the federal act, it would still be invalid as in conflict with the policy of Congress. Enforcement of the Congressional purpose to protect the civil liberties of aliens requires that the federal government retain the power to control and coordinate all activities with respect to registration and surveillance; this policy cannot be enforced if the states are permitted to enact and administer independent registration systems, whether for purely local ends or for some purpose which the states share in common with the nation.

Furthermore, if the states were permitted to administer independent statutes, the probable consequence would be to confuse the aliens as to their duties under each of the separate enactments, with their different provisions, different regulations,

and different methods of administration.[15] Confusion would, indeed, be worse confounded because of the fact that, unless local legislation is precluded, many municipalities and counties would in all likelihood establish registration requirements in addition to those prescribed by the states. That this is a real and not a hypothetical danger is shown by the analysis in Appendix C, *infra*, pp. 60–63, of the various state, county, and municipal statutes, ordinances and executive orders throughout the country which require the registration of aliens. This practical situation, of which Congress must have been aware, impels the conclusion that in enacting the federal statute Congress intended to preclude administration of all local registration laws.

In this connection it is of significance that almost all responsible state officials have agreed on the desirability of a single registration system. The Federal-State Conference on Law-Enforcement Problems of National Defense, held in Washington, D. C., on August 5 and 6 and attended by 230 officials from 46 states, the District of Columbia and the federal Government, unanimously agreed that "Federal registration and identification of aliens are desirable steps to secure uniformity and avoid confusion"; that the states and

[15] See to this effect the statement of Attorney General Jackson in his address to the Federal-State Conference on Law-Enforcement Problems of National Defense, copies of which have been filed with the Clerk of this Court.

municipalities should "rely on the Federal Act in order to secure uniformity and avoid confusion"; that "the Federal Government could most effectively assist the states by making available to responsible state officials under appropriate conditions and safeguards," the results of the federal registration in each state; that the state officials could assist in the federal registration by "conveying information to prospective registrants" and "overcoming their fears and suspicions"; and that "the joint task of the Federal and State Governments is to reassure the alien that registration is a friendly act, an effort to identify those who are friendly to our institutions, and to spare them from harassment and persecution." [16]

Gilbert v. *Minnesota,* 254 U. S. 325, discussed above in another aspect (see *supra,* pp. 18–19), is not opposed to the Government's contention. The federal espionage act involved in that case in no way manifested the judgment of Congress that the administration of similar state legislation might produce disaffection or otherwise jeopardize national interests, and the Court found no evidence of any necessary or potential conflict between the federal and state enactments on the same subject.

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[16] The report, it is true, also stated the belief of the states "that they still have the right to register all residents for state purposes" regardless of the outcome of the present litigation.

Mimeographed copies of the report from which the quotations are taken have been filed with the Clerk of this Court.

4. Nothing in the scanty debates in Congress or in the committee reports illumines the legislative intention concerning state action. But the President disclosed his understanding that the field had been completely occupied in a statement issued contemporaneously with his signing of the bill,[17] and the officials charged with administering the Act have taken the same position.[18] A formal statement issued by the President upon completing his share in the legislative process is, we believe, of importance in determining the legislative intention to preclude or permit state action. See Jones, *Statutory Doubts and Legislative Intention* (1940) 40 Col. L. Rev. 957, 968, n. 40; *cf. United States* v. *Dickerson,* 310 U. S. 554. And contemporaneous administrative construction of a new and untried statute is also entitled to weight, especially in the absence of any contradictory evidence.

[17] The President stated: "The only effective system of control over aliens in this country must come from the Federal Government alone. This is as true from a practical point of view as it is from a legal and constitutional point of view. Since Congress, by the act, has attempted to provide a single and uniform method of handling the difficult problem of alien registration in this country, it seems to me that attempts by the States or communities to deal with the problem individually will result in undesirable confusion and duplication." See N. Y. Times, June 30, 1940, Sec. I, p. 5; see also Message of the President to the Federal-State Conference on Law-Enforcement Problems of National Defense, cited in note 11, p. 23, *supra.*

[18] See note 11, p. 23, *supra.*

Fawcus Machine Co. v. *United States,* 282 U. S. 375, 378; *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *Mintz* v. *Baldwin,* 289 U. S. 346, 351.

5. There is no occasion in this case to consider to what extent the states retain the power to enact census legislation for local purposes. Cf. *City of New York* v. *Miln,* 11 Pet. 102. The Pennsylvania registration law extends far beyond any census purpose, as the court below held (R. 26); indeed, the state had adopted an alien census act prior to the enactment of its alien registration law.[19] Far from being a census act, the avowed purpose of the registration law, as well as the necessary effect of its operation, is to facilitate police surveillance of the activities of resident aliens. It is, therefore, pre-

[19] A Pennsylvania statute (Pa. Stats. Ann. [Purdon's Supp.], Tit. 24, sec. 1451) requires school officials, in 1938, 1945, and each ten years thereafter, to enumerate, by house-to-house canvass, "all persons twenty-one or more years of age resident within their district who are not citizens of the United States of America, giving their full name, age, sex, nationality, place of residence in school district, whether declarants, and whether petitioners for naturalization."

Some states have enacted statutes, akin to census acts, requiring the enumeration of aliens by officials or employers, without active participation by the alien. Mass. Ann. Laws (Supp.), c. 51, secs. 4, 7 (women, soldiers, sailors, persons subject to poll tax also listed); Mont. Rev. Codes (1935), sec. 3040 (employers to report alien employees quarterly); S. D. Sess. Laws 1935, c. 16, sec. 1 (assessors to list aliens); Utah Rev. Stats. (1933), sec. 75-28-6 (aliens subject to attendance at Americanization schools to register annually).

cisely the type of legislation which Congress intended to preclude.

II

APART FROM THE EFFECT OF THE ALIEN REGISTRATION ACT OF 1940, THE STATES MAY NOT REQUIRE THE REGISTRATION OF ALIEN RESIDENTS WITHOUT THE EXPRESS CONSENT OF CONGRESS.

The court below decided the present case prior to the enactment by Congress of the Alien Registration Act. Its holding that the Pennsylvania statute was unconstitutional was based in part upon the conclusion that the state law encroached upon a field reserved exclusively to federal action. This decision, we believe, was plainly correct.

1. The regulation of the relationship between alien residents and the Government is a matter of peculiar delicacy and gravity; the twin objectives of securing loyalty to our institutions by the vast alien majority and at the same time guarding against disloyalty to those institutions by the small alien minority can be achieved only by the formulation of a national policy enforced under unified control. Such a policy could not be formulated, much less enforced, if the various states were allowed to impose conditions, such as those embodied in the Pennsylvania statute, upon the liberty of aliens who reside within their borders.

The registration of aliens residing within the United States, or within a particular state, cannot be considered independently of the many other as-

pects of alien control. Title 8 of the United States Code contains a comprehensive and integrated system of immigration and naturalization laws, regulating who may enter the country and under what conditions (Secs. 100–299), who shall be deported from the country and for what causes (Secs. 154–157), and who shall be entitled to apply for citizenship and under what terms (Secs. 1–18, 351–416). This title further provides for the protection of the civil rights of aliens while residing within our borders (Sec. 41; see Point III, *infra*, pp. 43–49). The registration of aliens is part of the same field of regulation. It permits the federal government to ascertain the number of aliens illegally admitted to the country and thus to determine the effectiveness of the immigration laws; it serves to reveal the presence of aliens abusing our hospitality and thus subject to deportation; and it results in the accumulation of a mass of information of great value in the framing of future naturalization laws and policies.

The state shares none of these interests. The purpose of its statute is simply to guard against subversive activities (see pp. 23–24, *supra*). While legislation directed towards the accomplishment of this purpose might be valid if imposed upon all persons within the jurisdiction of the state, an entirely different question is presented when, in order to curb subversive activities, the state seeks to concern itself with the special problem of alien control. This special problem, as we have shown, is

one to which the Congress has specifically addressed its attention in the enactment of the immigration and naturalization laws. Further, it is one which must be reserved exclusively for federal action because it involves the allegiance of aliens to foreign powers and is therefore directly related to the conduct of our foreign relations. Recent history has strongly underlined the relationship between the subversive activities of resident aliens and the activities of the foreign powers to which they owe allegiance. Indeed, the very reason for singling out aliens for control is the fact that their allegiance is to foreign governments. As in the case of immigration and naturalization laws, therefore, control of the subversive activities of aliens, as such, cannot be divorced from control of the foreign policies of the United States. And because the formulation and enforcement of foreign policies is a matter of exclusive national concern, it is Congress alone which may legislate with respect to the related matter of alien control.[20] Cf. *Henderson* v. *Mayor of City of New York,* 92 U. S. 259, 273; *Holmes* v. *Jennison,* 14 Pet. 540, 570; *United States* v. *Rauscher,* 119 U. S. 407, 412-414.

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[20] The provisions of alien registration acts may themselves affect the conduct of our foreign affairs. Stringent registration statutes might well involve the United States in controversy with other countries. Such a statute "is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be

Moreover, the question whether the value of a registration system for aliens is worth whatever risk of disloyalty or disaffection it might cause is a matter of national policy, to be determined by Congress. Before the enactment of the Alien Registration Act, it was the deliberate policy of Congress to leave aliens free of such regulation (see *supra* pp. 19–21); since the enactment of that statute, the policy has been otherwise. But plainly, the question being one of national policy, the determination thereof is for Congress and not for the states. Whether Congress has kept silent, or, in speaking, has fully occupied the field, as by the Alien Registration Act of 1940, the states are wholly without power to interfere. *Henderson* v. *Mayor of City of New York*, 92 U. S. 259; *People*

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established by treaty or by legislation." *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 273. *Cf. Chy Lung* v. *Freeman*, 92 U. S. 275, 280. Conceivably, some state statutes might violate the terms of treaties with foreign countries; the registration fee imposed by the Pennsylvania Act, for example, may conflict with the common treaty provision that foreign nationals in our territory are not to be subject to any special taxes or imposts. Gibson, *Aliens and the Law* (1940, 31, 169–170). Registration provisions themselves may, as appellees here contend, conflict with treaty guaranties of equality of treatment and of the right to sojourn, travel, and work. Gibson, *op. cit. supra*, 22–25, 165–166; cf. President Arthur's Message Vetoing the Chinese Exclusion Act of 1882, 8 Richardson, *Messages and Papers of the Presidents*, 116–117. The United States, however, seems not to have objected to the registration by other countries of American citizens residing therein. 4 Moore, *Digest of International Law*, § 542; 6 Moore, *id.*, 316–318.

v. *Compagnie Generale Transatlantique,* 107 U. S. 59; *Cooley* v. *Board of Wardens,* 12 How. 299, 318–319; *Welton* v. *Missouri,* 91 U. S. 275, 282; *Hall* v. *De Cuir,* 95 U. S. 485, 490; *County of Mobile* v. *Kimball,* 102 U. S. 691, 697; *Bowman* v. *Chicago and Northwestern Ry. Co.,* 125 U. S. 465, 481, 485; *Covington and Cincinnati Bridge Co.* v. *Kentucky,* 154 U. S. 204, 212; *The Minnesota Rate Cases,* 230 U. S. 352, 399, 400; *Sanitary District* v. *United States,* 266 U. S. 405, 426.

The decisions holding that the states may legislate in furtherance of national purposes, shared by the states, when the state legislation does not conflict with any federal policy, are not in point. See *Halter* v. *Nebraska,* 205 U. S. 34 (state may prohibit desecration of national flag); *Minersville School District* v. *Gobitis,* 310 U. S. 586; cf. *Gilbert* v. *Minnesota,* 254 U. S. 325. The state laws considered in those cases were directed towards the implementation, and not the determination, of national policy. Moreover, the legislation there involved was related to the loyalty of all persons to the nation, and therefore to the state, and did not single out aliens for special treatment. As we have pointed out, the fact that the states have power to enforce laws seeking to enhance the loyalty of all persons to the nation does not mean that they have power to concern themselves with the special problem of the loyalty of aliens to the nation.

Henderson v. *Mayor of City of New York, supra,* lends strong support to the position that the sub-

ject of alien registration is reserved exclusively for federal regulation. That case involved a New York statute requiring the master or owner of a vessel to give a bond in the sum of $300 for every passenger landed in the state, conditioned to indemnify the local authorities against any expense for the relief or support of such person, but provided that the bond could be commuted by paying the sum of $1.50 for each of the passengers. In the event of failure to give bond, or pay the $1.50 in lieu thereof, a penalty of $500 was imposed for each pauper. The statute was sought to be justified as a means of providing for persons landing in the state without means of support and who might become charges of the state. The Court concluded that the purpose of the statute, measured by its effect, was to levy a tax of $1.50 on each immigrant passenger and, in this view, held the statute invalid. Emphasing the "vast interest" of the nation in immigration and the relation of the burden of the tax to foreign commerce and international relations, the Court concluded (92 U. S. at 273):

> A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. It is more than this; for it may properly be called *international*. It belongs to that class of laws which concern the exterior relation of this whole nation with

other nations and governments. * * * It is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be established by treaty or by legislation.

It is equally clear that the matter of these statutes may be, and ought to be, the subject of a uniform system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. * * *

The same reasoning was employed in the only two cases, other than the present one, in which the validity of state alien registration laws was considered. In 1891, California enacted a statute (Cal. Stat. 1891, c. 140, pp. 185, *et seq.*) "to prohibit the coming of Chinese persons into the State, whether subjects of the Chinese Empire or otherwise, and to provide for registration and certificates of residence, and determine the status of all Chinese persons now resident of this State, and fixing penalties and punishments for violation of this Act, and providing for deportation of criminals." All Chinese in California were required to secure certificates of residence (which were to contain a photograph of the registrant) and to exhibit this certificate, on demand, to any peace officer and also, upon traveling, to any ticket agent or conductor. Failure to obtain and carry such a cer-

tificate was an offense punishable by imprisonment or deportation. In a summary one-page opinion, in the case of *Ex parte Ah Cue,* 101 Cal. 197, the supreme court of the state struck the statute down as in conflict with the exclusive power of the federal government.[21]

Forty years later, the State of Michigan sought to place similar restrictions upon all aliens. Laws 1931, Act 241 (Mich. Stats. Ann., §§ 18.41–18.57). The statute required certificates of legal residence to be secured from the state commissioner of public safety, denied the right of employment to any alien without a certificate, and imposed penalties for failure to secure one. The act also directed the exclusion from the state or deportation of aliens illegally in the United States. In *Arrowsmith* v. *Voorhies,* 55 F. (2d) 310 (E. D. Mich.), a three-

[21] The court said (pp. 197–198): "The main purpose of this act, as shown by its title and by its provisions, is to prohibit Chinese persons from coming into the state, and also to prescribe terms and conditions upon which those residing within the state shall be permitted to remain or travel between different points in the state. The power thus attempted to be exercised is one which belongs exclusively to the general government by virtue of its authority to regulate commerce with foreign nations (section 8, article 1, of the Constitution of the United States), relating, as it does, to a subject matter in which all the people of the United States are concerned, and not alone those of the state of California. Congress, in the exercise of its constitutional power, has prescribed the terms upon which the Chinese now here shall be permitted to remain within the United States; and it is beyond the power of the state to impose any further conditions."

judge district court held that the statute, in all of its phases, trenched upon the exclusive jurisdiction of the federal government.

2. The invalidity of the Pennsylvania statute is emphasized by the principle enunciated by this Court in *Truax* v. *Raich*, 239 U. S. 33, 39, that an alien admitted to the United States under federal law, as was respondent Travaglini, is admitted "with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." See also *People* v. *Crane*, 214 N. Y. 154, 169, affirmed, 239 U. S. 195; cf. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 714; *Zakonaite* v. *Wolf*, 226 U. S. 272, 275. *Truax* v. *Raich* involved an Arizona statute providing that not less than 80 percent of the employees of any person or corporation employing more than five individuals should be qualified electors or native born citizens. In an action brought by an alien resident, not a qualified elector, to enjoin enforcement of the law upon the ground that it would deprive him of his livelihood, this Court held that the statute was unconstitutional because it violated the Fourteenth Amendment. In the course of its opinion, the Court stated (p. 42):

> The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they

> cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality.

While *Traux* v. *Raich* dealt specifically with a statutory restriction upon the right of an alien to earn a living, the principle of the case is applicable here. Like the Arizona statute, the probable effect of the Pennsylvania law would be to deter all aliens from entering and abiding in the state, and this, as the court below concluded (R. 31), may well have been one of its purposes. Such a limitation on the exercise of the alien's privileges, conferred by federal law, is no less invalid than an absolute prohibition. State taxes on the landing of immigrants have been held to constitute an unlawful burden on foreign commerce although the measures fell far short of excluding aliens. *Henderson* v. *Mayor of City of New York*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59. Similarly a state enactment restricting the exercise of the alien's privilege of residence and movement may likewise be invalid even though it does not entirely preclude enjoyment of the privilege.

It should be noted, too, that the Pennsylvania statute would have an adverse effect upon the free movement through Pennsylvania of aliens residing in other states. Such aliens, while traveling in Pennsylvania, would have to have with them at all times convincing proof of residence without the state in order to avoid danger of arrest for failure to carry and produce an identification card. A restriction of this type is totally inconsistent with the privilege of free movement throughout all of the United States conferred upon aliens who are lawfully admitted pursuant to the provisions of federal law.

3. The authorities relied upon by appellants are not opposed to our position. In *City of New York* v. *Miln*, 11 Pet. 102, the Court sustained a state statute which required the masters of vessels entering the Port of New York to make a written report of the name, place of birth, age, occupation, and last legal settlement of every passenger aboard. The *Miln* case might furnish some precedent for the validity of state census acts, but its authority was questioned in *Henderson* v. *Mayor of City of New York*, 92 U. S. 259, 266, 269–270, where it was specifically held inapplicable to a burdensome regulation of the landing if immigrants. It likewise has no bearing on the validity of burdensome restrictions on the residence and movements of aliens after their admission. As the court below observed,

the Pennsylvania registration statute is much more than a census act (R. 26). The statute imposes severe restrictions on the residence and movements of aliens and subjects them as a class to constant police surveillance. And, as previously pointed out, any state registration act may be used to curtail the liberties of loyal and law-abiding aliens.

The other cases relied on by appellants are even more remote. Many involve the right to public employment or to share in natural resources, and are governed by the elementary principle that the public property of a state belongs to its citizens alone. *Patsone* v. *Pennsylvania,* 232 U. S. 138; *Heim* v. *McCall,* 239 U. S. 175; *People* v. *Crane,* 214 N. Y. 154, affirmed, 239 U. S. 195. Some concern the use or possession of land, a subject always held to be of peculiarly local concern. *Terrace* v. *Thompson,* 263 U. S. 197; *Frick* v. *Webb,* 263 U. S. 326; *Webb* v. *O'Brien,* 263 U. S. 313. Others involve the power of the states to exclude aliens from certain occupations affecting the public health and morals, likewise a matter of local concern. *Ohio ex rel. Clarke* v. *Deckebach,* 274 U. S. 392; *Anton* v. *Van Winkle,* 297 Fed. 340 (D. Ore.) (operation of pool rooms). The question in all these cases was whether the statute denied the alien the protection afforded by the Fourteenth Amendment or whether it conflicted with the provisions of particular treaties. Apart from the asserted conflict with treaty provisions, no contention was made in any of the cases that

the statute involved related to a matter of paramount national concern or that it materially curtailed the alien's privilege to enter and abide in the states.[22]

III

THE PENNSYLVANIA ALIEN REGISTRATION ACT IS IN CONFLICT WITH SECTION 16 OF THE CIVIL RIGHTS ACT OF 1870

Section 5 of the Fourteenth Amendment gave Congress the power to enforce the provisions of the amendment by appropriate legislation. In accordance with this grant, Congress enacted Section 16 of the Civil Rights Act of 1870 (16 Stat. 140, 144), now appearing as Section 1977 of the Revised Statutes (8 U. S. C., § 41). This section provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punish-

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[22] Many states, it is true, have enacted legislation barring aliens from a large number of common professions and occupations, but there is no occasion here to consider the validity of such statutes. They are discussed in Note (1935) 83 U. of Pa. L. Rev. 74; Note (1939) 39 Col. L. Rev. 1207, 1219–1223; Note (1940) 17 N. Y. U. L. Q. Rev. 242; Fellman, *The Alien's Right to Work* (1938), 22 Minn. L. Rev. 137; Gibson, *Aliens and the Law* (1940).

ment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.[23]

The constitutional validity of this statute has often been sustained. *Strauder* v. *West Virginia,* 100 U. S. 303, 311–312; *Virginia* v. *Rives,* 100 U. S. 313, 317–318; *Neal* v. *Delaware,* 103 U. S. 370, 385–386; *Gibson* v. *Mississippi,* 162 U. S. 565, 580; *cf. Buchanan* v. *Warley,* 245 U. S. 60, 78. And there can be no doubt that its protection extends to aliens as well as to citizens. *Yick Wo v. Hopkins,* 118 U. S. 356, 369; *United States* v. *Wong Kim Ark,* 169

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[23] Section 24 (14) of the Judicial Code, 28 U. S. C., § 41 (14), under which federal jurisdiction is invoked here, was evidently intended, as its wording shows, to confer jurisdiction to vindicate the rights secured by R. S. § 1977. It confers upon the district courts original jurisdiction of "all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law * * * of any State, * * * of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The Criminal Code contains a cognate provision to R. S. § 1977. R. S. § 5510, 18 U. S. C., § 52, provides as follows: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

U. S. 649, 695–696; *In re Parrott*, 1 Fed. 481, 508 (C. C. D. Cal.); *Fraser* v. *McConway & Torley Co.*, 82 Fed. 257 (C. C. D. Pa.); *Whitfield* v. *Hanges*, 222 Fed. 745, 74 (C. C. A. 8th); *Martinez* v. *Fox Valley Bus Lines*, 17 F. Supp. 576 (N. D. Ill.); *In re Kotta*, 187 Cal. 27, 31.

The Pennsylvania statute is in plain conflict with the mandate of the Congressional act. The annual registration fee exacted from the alien is clearly a tax not imposed on white citizens. *Cf. In re Kotta, supra; Fraser* v. *McConway & Torley Co., supra.* The Act is invalid, however, wholly apart from the requirement of an annual fee. The statute imposes severe penalties for failing to register and for failing to display a registration card on proper demand, which are not imposed on white citizens. It is no answer that the state has not required white citizens to register. The requirement that all persons be subject to like "punishments," "pains," and "penalties" cannot be evaded by exempting white citizens from the requirement or prohibition the violation of which is made the subject of a penalty. Under R.S. § 1977, "the rights and responsibilties, civil and criminal" of all persons were intended to be "exactly the same" as those of white citizens. *Virginia* v. *Rives*, 100 U. S. 313, 318.

The provisions of R. S. § 1977 find their origin in Section 1 of the Civil Rights Act of April 9, 1866 (c. 31, 14 Stat. 27), which provided for the

protection of the civil rights of Negroes.[24] The debate on this Act shows plainly that Congress intended thereby to establish equality of "obligations, duties, pains and penalties" of colored and white persons. Cong. Globe, 39th Cong., 1st Sess., pp. 474–475, 1117–1118. Particular reference was made to the necessity of insuring full freedom of movement for Negroes; indeed, specific objection was made to a state statute requiring Negroes to carry passes in order to go from one county to another. Cong. Globe, 39th Cong., 1st Sess., pp. 474–475, 1118, 1160; see Flack, *Adoption of the Fourteenth Amendment*, p. 21. In the light of this legislative history, and of the clear language of R. S. § 1977, we believe it beyond dispute that a state statute providing for the registration of Negroes, and requiring them to carry and, on proper

[24] This Act provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

demand, to produce identification cards, and imposing criminal penalties for violation of the statute, would be invalid.

The same conclusion must follow in the case of state statutes, like the Pennsylvania Alien Registration Act, which are directed against aliens. Four years after the enactment of the Civil Rights Act of 1866, referred to above, Congress, by Section 16 of the Civil Rights Act of 1870 (c. 114, 16 Stat. 140, 144), now appearing as R. S. § 1977, extended to all persons within the jurisdiction of the United States the same protection which had previously been conferred on Negroes. The legislative history of the Civil Rights Act of 1870 shows that the change was intended to confer upon aliens the same civil rights which had already been guaranteed to Negroes. Cong. Globe, 41st Cong., 2d Sess., pp. 1536, 3658; Flack, *op. sit., supra,* pp. 219, 221.

It is unnecessary to inquire whether the Pennsylvania statute denies aliens equal protection in violation of the Fourteenth Amendment, apart from R. S. § 1977. The fifth section of this amendment clearly empowers Congress to implement the Constitutional prohibition by defining with more precision the standard of equality embodied in the general language of the amendment. See Note, *The Enabling Clause of the Fourteenth Amendment* (1933) 33 Col. L. Rev. 854, 861–862. This is

the implicit assumption of the cases decided by this Court involving the statute, cited at pages 44–45, *supra*.

Decisions sustaining the power of the states to discriminate against aliens in public employment (*Heim* v. *McCall*, 239 U. S. 175) or in the use of natural resources (*Patsone* v. *Pennsylvania*, 232 U. S. 138) are not opposed. These cases, as we have observed in another connection, are based upon the principle that public property belongs to the citizens of the states alone. There is nothing in the terms of R. S. § 1977 which requires the states to make a gift of such property to others.[25]

The case of *Ohio ex rel. Clarke* v. *Deckebach*, 274 U. S. 392, sustaining a city ordinance requiring a license for the operation of pool rooms and pro-

[25] *Terrace* v. *Thompson*, 263 U. S. 197, upholding state legislation which withheld the right to own land in the state from aliens who had not in good faith declared their intention to become citizens of the United States, is likewise not opposed to our position, since R. S. § 1977 does not apply to this type of law. The Civil Rights Act of April 9, 1866, 14 Stat. 27, protected, together with the rights enumerated in R. S. § 1977, the rights "to inherit, purchase, lease, sell, hold, and convey real and personal property." These words were omitted from Section 16 of the Act of May 31, 1870, 16 Stat. 140, 144 (from which R. S. § 1977 directly derives), and the legislative history makes clear that the omission was deliberate. See statement of Sen. Stewart on S. 365, forerunner of the Act of May 31, 1870, Cong. Globe, 41st Cong., 2d Sess., p. 1536. This difference between the rights of citizens and those of "all persons" has been carried over into R. S. § 1977 (8 U. S. Code, § 41) and R. S. § 1978 (8 U. S. Code, § 42).

hibiting the issuance of a license to aliens, is in principle opposed to our contention. However, R. S. § 1977 was not considered by this Court in the decision of the *Clarke* case or, indeed, in the decision of any of the other cases relied on by appellants.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

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APPENDIX A

The Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939, Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806) provides as follows:

An Act Requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. On or before the first day of January, one thousand nine hundred and forty, and during the month of December, of the year one thousand nine hundred and thirty-nine and of each year thereafter, every alien, eighteen (18) years or over, residing in this Commonwealth, who is not a father or mother of a son or daughter who has served in the service of the United States during any war, or who has not filed an application declaring his or her intention to become an American citizen, or who, having filed such application, shall not have become naturalized within a period of three years thereafter, except such aliens who have resided continuously in the United States since December thirty-first, one thousand nine hundred and eight, and who have never been convicted of any criminal offence in any court of record, shall register with the Department of Labor and Industry, on forms to be prescribed and

furnished by the department; and every such alien becoming a resident of this Commonwealth after the first day of January, one thousand nine hundred and forty, shall, in like manner, register with the department within thirty days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband, if any, of such alien member, names and ages of all children under eighteen (18) residing with him or her, and, if not his or her own, the names of their parents, and such other information and details as the department shall direct.

SECTION 2. For each original registration and for each annual registration thereafter, the person registered shall pay to the department a registration fee of one dollar ($1.00), and shall receive an alien identification card which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

SECTION 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section one of this act, unless such alien shall exhibit an alien identification card for the current registration period.

SECTION 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records shall be retained for a period of at least three years. The department shall have power to make and enforce

rules and regulations to carry into effect and enforce the provisions of this act.

SECTION 5. Every alien, except those exempted under the provisions of section one of this act, over the age of eighteen (18), who has not declared his or her intention to become an American citizen, and who fails to register as provided in this act within any of the periods required hereby, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than one hundred dollars ($100.00) or to undergo imprisonment for not more than sixty (60) days, or both.

Every alien required to be registered, who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than ten dollars ($10.00) or to undergo imprisonment for not more than ten (10) days, or both.

SECTION 6. (a) Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman, or a magistrate, which information must be filed in the name of the Commonwealth, and within not less than five days nor more than ten days the magistrate, alderman or justice of the peace shall send by registered mail, to the person charged, at the address of such person, a notice in writing, of the filing of the information, together with a copy thereof, and a notice to appear within ten (10) days of the date of the written notice. If the person named in the information shall not voluntarily appear within ten (10) days of the date of the written notice, a warrant may then be issued

and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant, shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

SECTION 7. All acts and parts of acts inconsistent herewith are hereby repealed.

APPENDIX B

Title III of the Alien Registration Act of 1940, Public, No. 670, 76th Cong., 3d Sess., c. 439, provides as follows:

> SEC. 30. No visa shall hereafter be issued to any alien seeking to enter the United States unless said alien has been registered and fingerprinted in duplicate. One copy of the registration and fingerprint record shall be retained by the consul. The second copy shall be attached to the alien's visa and shall be taken up by the examining immigrant inspector at the port of arrival of the alien in the United States and forwarded to the Department of Justice, at Washington, District of Columbia.
>
> Any alien seeking to enter the United States who does not present a visa (except in emergency cases defined by the Secretary of State), a reentry permit, or a border-crossing identification card shall be excluded from admission to the United States.
>
> SEC. 31. (a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 30, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.
>
> (b) It shall be the duty of every parent or legal guardian of any alien now or here-

after in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 30, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

SEC. 32. Notwithstanding the provisions of sections 30 and 31—

(a) The application for the registration and fingerprinting, or for the registration, of any alien who is in the United States on the effective date of such sections may be made at any time within four months after such date.

(b) No foreign government official, or member of his family, shall be required to be registered or fingerprinted under this title.

(c) The Commissioner is authorized to prescribe, with the approval of the Attorney General, special regulations for the registration and fingerprinting of (1) alien seamen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of deportation, and (5) aliens of any other class not lawfully admitted to the United States for permanent residence.

SEC. 33. (a) All applications for registration and fingerprinting under section 31 shall be made at post offices or such other places as may be designated by the Commissioner.

(b) It shall be the duty of every postmaster, with such assistance as shall be

provided by the Commissioner, to register and fingerprint any applicant for registration and fingerprinting under such section, and for such purposes to designate appropriate space in the local post office for such registration and fingerprinting. Every postmaster shall forward promptly to the Department of Justice, at Washington, District of Columbia, the registration and fingerprint record of every alien registered and fingerprinted by him. The Commissioner may designate such other places for registration and fingerprinting as may be necessary for carrying out the provisions of this Act, and provide for registration and fingerprinting of aliens at such places by officers or employees of the Immigration and Naturalization Service designated by the Commissioner. The duties imposed upon any postmaster under this Act shall also be performed by any employees at the post office of such postmaster who are designated by the postmaster for such purpose.

SEC. 34. (a) The Commissioner is authorized and directed to prepare forms for the registration and fingerprinting of aliens under this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General.

(b) All registration and fingerprint records made under the provisions of this title shall be secret and confidential, and shall be made available only to such persons or agen-

cies as may be designated by the Commissioner, with the approval of the Attorney General.

(c) Every person required to apply for the registration of himself or another under this title shall submit under oath the information required for such registration. Any person authorized to register aliens under this title shall be authorized to administer oaths for such purpose.

SEC. 35. Any alien required to be registered under this title who is a resident of the United States shall notify the Commissioner in writing of each change of residence and new address within five days from the date of such change. Any other alien required to be registered under this title shall notify the Commissioner in writing of his address at the expiration of each three months' period of residence in the United States. In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notices required by this section shall be given by such parent or legal guardian.

SEC. 36. (a) Any alien required to apply for registration and to be fingerprinted who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall, upon conviction thereof be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Any alien, or any parent or legal guardian of any alien, who fails to give written notice to the Commissioner of change of address as required by section

35 of this Act shall, upon conviction thereof, be fined not to exceed $100, or be imprisoned not more than thirty days, or both.

(e) Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted within five years after entry into the United States shall, upon the warrant of the Attorney General, be taken into custody, and be deported in the manner provided in sections 19 and 20 of the Immigration Act of February 5, 1917, as amended.

SEC. 37. (a) The Commissioner, with the approval of the Attorney General, is authorized and empowered to make and prescribe, and from time to time to change and amend, such rules and regulations not in conflict with this Act as he may deem necessary and proper in aid of the administration and enforcement of this title (including provisions for the identification of aliens registered under this title); except that all such rules and regulations, insofar as they relate to the performance of functions by consular officers or officers or employees in the Postal Service, shall be prescribed by the Secretary of State and the Postmaster General, respectively, upon recommendation of the Attorney General. The powers conferred upon the Attorney General by this Act and all other powers of the Attorney General relating to the administration of the Immigration and Naturalization Service may be exercised by the Attorney

General through such officers of the Department of Justice, including officers of the Immigration and Naturalization Service, attorneys, special attorneys, and special assistants to the Attorney General, as he may designate specifically for such purposes.

(b) The Commissioner is authorized to make such expenditures, to employ such additional temporary and permanent employees, and to rent such quarters outside the District of Columbia as may be necessary for carrying out the provisions of this title.

SEC. 38 (a) For the purposes of this title—

(1) the term "United States", when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands;

(2) the term "Commissioner" means the Commissioner of Immigration and Naturalization.

(b) The provisions of this title shall take effect upon the date of enactment of this Act; except that sections 30 and 31 shall take effect sixty days after the date of its enactment.

SEC. 39. The President is authorized to provide, by Executive order, for the registration and fingerprinting, in a manner as nearly similar to that provided in this title as he deems practicable, of aliens in the Panama Canal Zone.

APPENDIX C

STATE, COUNTY, AND MUNICIPAL ALIEN REGISTRATION STATUTES AND ORDINANCES, AND RECENT EXECUTIVE ACTION REQUIRING REGISTRATION

Complete information, especially as to recent legislation, is not available, and the following list is not exhaustive. The list has been compiled on the basis of information gathered from the answers to a questionnaire sent to state officials by the Neutrality Unit of the Department of Justice, and from reports in the press.

Alabama: Apparently various cities have recently adopted ordinances providing for the registration of aliens.

Arkansas: The Governor recently called upon aliens to register with state law-enforcement agencies; there is, apparently, no supporting legislation.

California: The Board of Supervisors of Los Angeles County has authorized preparation of an ordinance requiring registration and fingerprinting of aliens in unincorporated county areas.

Connecticut: In 1918, a statute was enacted providing (Gen. Stats. (1930), sec. 6042):

> "When a state of war exists * * * or, in the judgment of the governor, public safety or necessity requires such action, the governor may, by proclamation, direct every subject or citizen of such foreign countries

as the governor may designate in such proclamation, who are in this state * * *" to register. "Every person to whom such proclamation is applicable shall also comply with such rules of personal identification as the governor shall from time to time prescribe."

Florida: In 1917, a statute was enacted (Acts 1917, ch. 7394, Sec. 1; Comp. Gen. Laws (1927) sec. 2078) empowering the governor to require registration of alien subjects of enemy countries or countries with whom a state of war "shall be imminent."

Georgia: The Governor has recently called for registration by aliens; there is, apparently, no state statute on the subject. The City Council of Augusta has recently adopted an ordinance requiring aliens to register with the police department. The city of Atlanta has also recently enacted such an ordinance.

Iowa: During the World War, Iowa adopted a registration statute similar to that of Connecticut (Code (1939) sec. 503).

Louisiana: In 1917, a registration act similar to that of Connecticut was adopted. Acts 1917 (E. S.) No. 20; Gen. Stats. (Dart, 1939), Tit. 3, sec. 282.

A recent proposed bill to require registration of aliens has been approved by the appropriate committees of both houses of the state legislature.

Maine: During the World War, a statute like that of Florida was adopted. Rev. Stats. (1930) ch. 34, sec. 3. Aliens are now being registered, apparently under this act.

Michigan: In 1931, Michigan adopted a comprehensive act (L. 1931, act 241; Stat. Ann. secs. 18.41–18.57) which was declared unconstitutional in *Arrowsmith* v. *Voorhies,* 55 F. (2d) 310 (E. D. Mich.)

Nevada: Aliens are now being registered, but under what authority is not known.

New Jersey: Alien registration bills have been introduced into the state legislature, which has recessed until November.

New Hampshire: In 1917, a statute similar to that of Florida was adopted. Acts 1917, ch. 173; Pub. Laws (1926) ch. 154.

New York: In 1917, a statute similar to that of Connecticut was adopted. L. 1917, ch. 159; Executive Law, sec. 10.

North Carolina: In 1927, a very comprehensive alien registration statute was adopted. Acts 1927, ch. 185; Code (1939) secs. 193 (a)–(h).

Ohio: City Councils in Trumbell County have lately passed ordinances requiring registration and fingerprinting of aliens.

Pennsylvania: In 1939, the statute under consideration was adopted. Pennsylvania Alien Registration Act (P. L. 652, June 21, 1939, Purdon's Pa. Stats. Ann., Tit. 35, §§ 1801–1806).

The City of McKeesport has recently required aliens to register.

South Carolina: A registration statute was adopted in June 1940. Section 9 provides:

> That all aliens and foreign-born residents of South Carolina shall report to the Clerk of the Court of the County in which they reside within thirty (30) days after the approval of this Act, and furnish him with their name, place of residence, age, place of

birth, height, approximate weight, race, color of hair, and eyes, the nature of their business or vocation, if any, and if employed by any person, firm, corporation or society, the name thereof, and the address of the principal office, together with the name and address of the president, or other managing officer thereof. It shall be the duty of the said Clerk to record such names in a book kept for that purpose, in alphabetical order, and on the 1st and 15th day of each month forward a list of such persons to the Governor of the state. Likewise, any alien coming into South Carolina is hereby required within ten (10) days after his arrival, to report and furnish the information above listed to such Clerks of Court. Any person wilfully refusing or failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor and any person failing for ten (10) days to report and give the information herein required, after he has been notified in writing so to do by a Judge of the state or county, any magistrate, sheriff, constable or other peace officer so to do shall be declared to be willfully transgressing the provisions of this section and guilty of a misdemeanor and punishable as provided herein.

Tennessee: Nashville, and apparently other cities and towns, have adopted alien registration ordinances.

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SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1940.

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, *vs.* Bernard Davidowitz and Vincenzo Travaglini.	On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[January 20, 1941.]

Mr. Justice BLACK delivered the opinion of the Court.

This case involves the validity of an Alien Registration Act adopted by the Commonwealth of Pennsylvania.[1] The Act, passed in 1939, requires every alien 18 years or over, with certain exceptions,[2] to register once each year; provide such information as is required by the statute, plus any "other information and details" that the Department of Labor and Industry may direct; pay $1 as an annual registration fee; receive an alien identification card and carry it at all times; show the card whenever it may be demanded by any police officer or any agent of the Department of Labor and Industry; and exhibit the card as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one. The Department of Labor and Industry is charged with the duties of classifying the registrations for "the purpose of ready reference", and furnishing a copy of the classification to the Pennsylvania

[1] Pa. Stats. Ann. (Purdon, Supp. 1940) tit. 35, §§ 1801-1806.

[2] The exceptions are: aliens who are the "father or mother of a son or daughter who has served in the service of the United States during any war"; aliens who have resided in the United States continuously since December 31, 1906, without acquiring a criminal record; and aliens who have filed their application for citizenship. The latter exception is qualified by the proviso that aliens in that category must still register if they "shall not have become naturalized within a period of three years" after applying for citizenship. Since federal law requires five years residence before citizenship can be acquired (8 U. S. C. § 382), this exception means that aliens may be exempt under the Pennsylvania statute for the first three years after their arrival but subject to the statute for the two years immediately preceding their eligibility for citizenship.

Motor Police. Nonexempt aliens who fail to register are subject to a fine of not more than $100 or imprisonment for not more than 60 days, or both. For failure to carry an identification card or for failure to show it upon proper demand, the punishment is a fine of not more than $10, or imprisonment for not more than 10 days, or both.

A three-judge District Court enjoined enforcement of the Act, holding that it denied aliens equal protection of the laws, and that it encroached upon legislative powers constitutionally vested in the federal government.[3] It is that judgment we are here called upon to review.[4] But in 1940, after the court had held the Pennsylvania Act invalid, Congress enacted a federal Alien Registration Act.[5] We must therefore pass upon the state Act in the light of the Congressional Act.[6]

The federal Act provides for a single registration of aliens 14 years of age and over; detailed information specified by the Act, plus "such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General"; finger-printing of all registrants; and secrecy of the federal files, which can be "made available only to such persons or agencies as may be designated by the Commissioner, with the approval of the Attorney General." No requirement that aliens carry a registration card to be exhibited to police or others is embodied in the law, and only the wilful failure to register is made a criminal offense; punishment is fixed at a fine of not more than $1000, imprisonment for not more than 6 months, or both.

The basic subject of the state and federal laws is identical—registration of aliens as a distinct group. Appellants urge that the

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[3] 30 F. Supp. 470. One alien and one naturalized citizen joined in proceedings filed against certain state officials to enjoin enforcement of the Act. The answer of the defendants admitted the material allegations of the petition and defended the Act on the ground that it was within the power of the state. Plaintiffs moved for judgment on the pleadings under Rule 12(c). The requested relief was denied as to the naturalized citizen but granted as to the alien.

[4] The case is here on appeal under section 266 of the Judicial Code, as amended (28 U. S. C. § 380). We noted probable jurisdiction on March 25, 1940.

[5] Public Act No. 670, 76th Cong., 3d Sess., c. 439.

[6] Cf. Vandenbark v. Owens-Illinois Glass Co., No. 141 this term, decided January 6, 1941. And see United States v. Schooner Peggy, 1 Cranch 103, 110, and Carpenter v. Wabash Ry., 309 U. S. 23, 26-27.

Pennsylvania law "was constitutional when passed", and that "The only question is whether the state act is in abeyance or whether the state and Federal Government have concurrent jurisdiction to register aliens for the protection of inhabitants and property." Appellees, on the other hand, contend that the Pennsylvania Act is invalid, for the reasons that it (1) denies equal protection of the laws to aliens residing in the state; (2) violates section 16 of the Civil Rights Act of 1870;[7] (3) exceeds Pennsylvania's constitutional power in requiring registration of aliens without Congressional consent. Appellees' final contention is that the power to restrict, limit, regulate and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that even if the state can legislate on this subject at all, its power is subordinate to supreme national law. Appellees conclude that by its adoption of a comprehensive, integrated scheme for regulation of aliens—including its 1940 registration act—Congress has precluded state action like that taken by Pennsylvania.[8]

In the view we take it is not necessary to pass upon appellees' first, second, and third contentions, and so we pass immediately to their final question, expressly leaving open all of appellees' other contentions, including the argument that the federal power in this field, whether exercised or unexercised, is exclusive. Obviously the answer to appellees' final question depends upon an analysis of the respective powers of state and national

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[7] 16 Stat. 140, 144, 8 U. S. C. § 41: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

[8] Pennsylvania is not alone among the states in attempting to compel alien registration. Several states still have dormant on their statute books laws passed in 1917-18, empowering the governor to require registration when a state of war exists or when public necessity requires such a step. E. g., Conn. Gen. Stats. (1930) tit. 59, § 6042; Fla. Comp. Gen. Laws (1927) § 2078; Iowa Code (1939) § 503; La. Gen. Stats. (Dart, 1939) tit. 3, § 282; Me. Rev. Stats. (1930) ch. 34, § 3; N. H. Pub. Laws (1926) ch. 154; N. Y. Cons. Laws (Executive Law) § 10. Other states, like Pennsylvania, have passed registration laws more recently. E. g., S. C. Acts (1940) No. 1014, § 9, p. 1939; N. C. Code (1939) §§ 193 (a)-(h). In several states, municipalities have recently undertaken local alien registration.

Registration statutes of Michigan and California were held unconstitutional in Arrowsmith *v.* Voorhies, 55 F. (2d) 310, and Ex parte Ah Cue, 101 Cal. 197, 35 Pac. 556.

governments in the regulation of aliens as such, and a determination of whether Congress has, by its action, foreclosed enforcement of Pennsylvania's registration law.

First. That the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation, is made clear by the Constitution, was pointed out by the authors of The Federalist in 1787,[9] and has since been given continuous recognition by this Court.[10] When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of aliens as such, the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute, for Article VI of the Constitution provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. "For local interests the several States of the Union exist; but for international purposes, embracing our relations with foreign nations, we are but one people, one nation, one power."[11] Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local in-

[9] The importance of national power in all matters relating to foreign affairs and the inherent danger of state action in this field are clearly developed in Federalist papers No. 3, 4, 5, 42 and 80.

[10] E. g., Henderson v. Mayor of New York, 92 U. S. 259; People v. Compagnie Generale Transatlantique, 107 U. S. 59; Fong Yue Ting v. United States, 149 U. S. 698, 711. Cf. Z. & F. Assets Realization Corp. v. Hull, No. 381 this term, decided January 6, 1941.

[11] The Chinese Exclusion Cases, 130 U. S. 581, 606. Thomas Jefferson, who was not generally favorable to broad federal powers, expressed a similar view in 1787: "My own general idea was, that the States should severally preserve their sovereignty in whatever concerns themselves alone, and that whatever may concern another State, or any foreign nation, should be made a part of the federal sovereignty." Memoir, Correspondence and Miscellanies from the Papers of Thomas Jefferson (1829), vol. 2, p. 230, letter to Mr. Wythe. Cf. James

terference. As Mr. Justice Miller well observed of a California statute burdening immigration: "If [the United States] should get into a difficulty which would lead to war, or to suspension of intercourse, would California alone suffer, or all the Union?"[12]

One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government.[13] This country, like other nations, has entered into numerous treaties of amity and commerce since its inception—treaties entered into under express constitutional authority, and binding upon the states as well as the nation. Among these treaties have been many which not only promised and guaranteed broad rights and privileges to aliens sojourning in our own territory, but secured reciprocal promises and guarantees for our own citizens while in other lands. And apart from treaty obligations, there has grown up in the field of international relations a body of customs defining with more or less certainty the duties owing by all nations to alien residents—duties which our State Department has often success-

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Madison in Federalist paper No. 42: "'The *second* class of powers, lodged in the general government, consist of those which regulate the intercourse with foreign nations. . . . This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations.'"

[12] Chy Lung *v.* Freeman, 92 U. S. 275, 279. Cf. Alexander Hamilton in Federalist paper No. 80: "The peace of the *whole* ought not to be left at the disposal of a *part*. The Union will undoubtedly be answerable to foreign powers for the conduct of its members." That the Congress was not unaware of the possible international repercussions of registration legislation is apparent from a study of the history of the 1940 federal Act. Congressman Coffee, speaking against an earlier version of the bill, said: "Are we not guilty of deliberately insulting nations with whom we maintain friendly diplomatic relations? Are we not humiliating their nationals? Are we not violating the traditions and experiences of a century and a half?" 84 Cong. Rec. 9536.

[13] For a collection of typical international controversies that have arisen in this manner, see Dunn, The Protection of Nationals (1932), pp. 13 *et seq.* Cf. John Jay in Federalist paper No. 3: "The number of wars which have happened or will happen in the world will always be found to be in proportion to the number and weight of the causes, whether *real* or *pretended*, which *provoke* or *invite* them. If this remark be just, it becomes useful to inquire whether so many just causes of war are likely to be given by *United America* as by *disunited* America; for if it should turn out that United America will probably give the fewest, then it will follow that in this respect the Union tends most to preserve the people in a state of peace with other nations."

fully insisted foreign nations must recognize as to our nationals abroad.[14] In general, both treaties and international practices have been aimed at preventing injurious discriminations against aliens. Concerning such treaties, this Court has said: "While treaties, in safeguarding important rights in the interest of reciprocal beneficial relations, may by their express terms afford a measure of protection to aliens which citizens of one or both of the parties may not be able to demand against their own government, the general purpose of treaties of amity and commerce is to avoid injurious discrimination in either country against the citizens of the other."[15]

Legal imposition of distinct, unusual and extraordinary burdens and obligations upon aliens—such as subjecting them alone, though perfectly law-abiding, to indiscriminate and repeated interception and interrogation by public officials—thus bears an inseparable relationship to the welfare and tranquillity of all the states, and not merely to the welfare and tranquillity of one. Laws imposing such burdens are not mere census requirements, and even though they may be immediately associated with the accomplishment of a local purpose, they provoke questions in the field of international affairs. And specialized regulation of the conduct of an alien before naturalization is a matter which Congress must consider in discharging its constitutional duty "To establish an Uniform Rule of Naturalization . . . . ." It cannot be doubted that both the state and the federal registration laws belong "to that class of laws which concern the exterior relation of this whole nation with other nations and governments."[16] Consequently the regulation of aliens is so intimately blended and intertwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, "the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not con-

[14] "In consequence of the right of protection over its subjects abroad which every State enjoys, and the corresponding duty of every State to treat aliens on its territory with a certain consideration, an alien . . . must be afforded protection for his person and property. . . . Every State is by the Law of Nations compelled to grant to aliens at least equality before the law with its citizens, as far as safety of person and property is concerned. An alien must in particular not be wronged in person or property by the officials and courts of a State. Thus the police must not arrest him without just cause. . . ." 1 Oppenheim, International Law (5th ed., 1937), pp. 547-548. And see 4 Moore, International Law Digest, pp. 2, 27, 28; Borchard, The Diplomatic Protection of Citizens Abroad (1928), pp. 25, 37, 73, 104.

[15] Todok v. Union State Bank, 281 U. S. 449, 454-455.

[16] Henderson v. Mayor of New York, 92 U. S. 259, 273.

troverted, must yield to it."[17] And where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.[18] There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference.[19] But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[20] And in that determination, it is of importance

[17] Gibbons *v.* Ogden, 9 Wheat. 1, 211; see Charleston and Western Carolina Railway Co. *v.* Varnville Furniture Co., 237 U. S. 597. Cf. People *v.* Compagnie Generale Transatlantique, 107 U. S. 59, 63, where the court, speaking of a state law and a federal law dealing with the same type of control over aliens, said that the federal law "covers the same ground as the New York statute, and they cannot co-exist."

[18] Cf. Nielsen *v.* Johnson, 279 U. S. 47; Asakura *v.* Seattle, 265 U. S. 332; International Shoe Co. *v.* Pinkus, 278 U. S. 261, 265, and cases there cited. And see Savage *v.* Jones, 225 U. S. 501, 539. Appellant relies on Gilbert *v.* Minnesota, 254 U. S. 325, and Halter *v.* Nebraska, 205 U. S. 34, but neither of those cases is relevant to the issues here presented.

[19] E. g., Hauenstein *v.* Lynham, 100 U. S. 483, 489; Geofroy *v.* Riggs, 133 U. S. 258, 267; Asakura *v.* Seattle, 265 U. S. 332, 340, 342; Nielsen *v.* Johnson, 279 U. S. 47, 52; Todok *v.* Union State Bank, 281 U. S. 449, 454; Santovincenzo *v.* Egan, 284 U. S. 30, 40; United States *v.* Belmont, 301 U. S. 324, 331 (but compare the affirmance by an equally divided Court in United States *v.* Moscow Fire Ins. Co., 309 U. S. 624); Kelly *v.* Washington, 302 U. S. 1, 10, 11; Marrer *v.* Hamilton, 309 U. S. 598, 604; Bacardi Corporation *v.* Domenech, No. 21 this term, decided December 9, 1940, 85 L. Ed. 179, 183, 188.

[20] Cf. Savage *v.* Jones, 225 U. S. 501, 533: "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

that this legislation is in a field which affects international relations, the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest of limits; the state's power here is not bottomed on the same broad base as is its power to tax.[21] And it is also of importance that this legislation deals with the rights, liberties, and personal freedoms of human beings, and is in an entirely different category from state tax statutes or state pure food laws regulating the labels on cans.[22]

Our conclusion is that appellee is correct in his contention that the power to restrict, limit, regulate, and register aliens as a distinct group is not an equal and continuously existing concurrent power of state and nation, but that whatever power a state may have is subordinate to supreme national law.[23] We proceed therefore to an examination of Congressional enactments to ascertain whether or not Congress has acted in such manner that its action should preclude enforcement of Pennsylvania's law.

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[21] Express recognition of the breadth of the concurrent taxing powers of state and nation is found in Federalist paper No. 32.

[22] It is true that where the Constitution does not of itself prohibit state action, as in matters related to interstate commerce, and where the Congress, while regulating related matters, has purposely left untouched a distinctive part of a subject which is peculiarly adapted to local regulation, the state may legislate concerning such local matters which Congress could have covered but did not. Kelly *v.* Washington, 302 U. S. 1, 9, 10, 11, 12, 13, 14 (inspection for seaworthiness of hull and machinery of motor-driven tugs). And see Reid *v.* Colorado, 187 U. S. 137, 147 (prohibition on introduction of diseased cattle or horses); Savage *v.* Jones, 225 U. S. 501, 529, 532 (requirement that certain labels reveal package contents); Carey *v.* South Dakota, 250 U. S. 118, 121 (prohibition of shipment by carrier of wild ducks); Dickson *v.* Uhlmann Grain Co., 288 U. S. 188, 199 (prohibition of margin transactions in grain where there is no intent to deliver); Mintz *v.* Baldwin, 289 U. S. 346, 350-352 (inspection of cattle for infectious diseases); Maurer *v.* Hamilton, 309 U. S. 598, 604, 614 (prohibition of car-over-cab trucking).

[23] As supporting the contention that the state can enforce its alien registration legislation, even though Congress has acted on the identical subject, appellant relies upon a number of previous opinions of this Court. Ohio ex rel. Clarke *v.* Deckebach, 274 U. S. 392, 395, 396; Frick *v.* Webb, 263 U. S. 326, 333; Webb *v.* O'Brien, 263 U. S. 313, 321, 322; Terrace *v.* Thompson, 263 U. S. 197, 223, 224; Heim *v.* McCall, 239 U. S. 175, 193, 194. In each of those cases this Court sustained state legislation which applied to aliens only, against an attack on the ground that the laws violated the equal protection clause of the Constitution. In each case, however, the Court was careful to point out that the state law was not in violation of any valid treaties adopted by the United States, and in no instance did it appear that Congress had passed legislation on the subject. In the only case of this type in which there was an outstanding treaty provision in conflict with the state law, this Court held the state law invalid. Asakura *v.* Seattle, 265 U. S. 332.

Second. For many years Congress has provided a broad and comprehensive plan describing the terms and conditions upon which aliens may enter this country, how they may acquire citizenship, and the manner in which they may be deported. Numerous treaties, in return for reciprocal promises from other governments, have pledged the solemn obligation of this nation to the end that aliens residing in our territory shall not be singled out for the imposition of discriminatory burdens. Our Constitution and our Civil Rights Act have guaranteed to aliens "the equal protection of the laws [which] is a pledge of the protection of equal laws."[24] With a view to limiting prospective residents from foreign lands to those possessing the qualities deemed essential to good and useful citizenship in America, carefully defined qualifications are required to be met before aliens may enter our country. These qualifications include rigid requirements as to health, education, integrity, character, and adaptability to our institutions. Nor is the alien left free from the application of federal laws after entry and before naturalization. If during the time he is residing here he should be found guilty of conduct contrary to the rules and regulations laid down by Congress, he can be deported. At the time he enters the country, at the time he applies for permission to acquire the full status of citizenship, and during the intervening years, he can be subjected to searching investigations as to conduct and suitability for citizenship.[25] And in 1940 Congress added to this comprehensive scheme a complete system for alien registration.

The nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law, are all important in considering the question of whether supreme federal enactments preclude enforcement of state laws on the same subject.[26] Opposition to laws permitting invasion of the personal liberties of law-abiding individuals, or singling out aliens as particularly dangerous and undesirable groups, is deep-seated in this country. Hostility to such legislation in America stems back to our colonial history,[27] and champions of freedom for the individual have always vigorously opposed burdensome registration systems.

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[24] Yick Wo v. Hopkins, 118 U. S. 356, 369.

[25] 8 U. S. C. §§ 152, 373, 377(c), 382, 398, 399(a).

[26] Cf. Prigg v. Pennsylvania, 16 Pet. 539, 622, 623.

[27] As early as 1641, in the Massachusetts "Body of Liberties", we find the statement that "Every person within this Jurisdiction, whether Inhabitant or forreiner, shall enjoy the same justice and law that is generall for the plantation . . ."

The drastic requirements of the alien Acts of 1798[28] brought about a political upheaval in this country the repercussions from which have not even yet wholly subsided.[29] So violent was the reaction to the 1798 laws that almost a century elapsed before a second registration act was passed. This second law, which required Chinese to register and carry identification cards with them at all times, was enacted May 5, 1892. An opponent of this legislation, speaking in the Senate of the requirement that cards be carried, said: "[The Chinese covered by the Act] are here ticket-of-leave men; precisely as, under the Australian law, a convict is allowed to go at large upon a ticket-of-leave, these people are to be allowed to go at large and earn their livelihood, but they must have their tickets-of-leave in their possession. . . . This inaugurates in our system of government a new departure; one, I believe never before practised, although it was suggested in conference that some such rules had been adopted in slavery times to secure the peace of society."[30]

For many years bills have been regularly presented to every Congress providing for registration of aliens. Some of these bills proposed annual registration of aliens, issuance of identification cards containing information about and a photograph of the bearer, exhibition of the cards on demand, payment of an annual fee, and kindred requirements.[31] Opposition to these bills was based upon charges that their requirements were at war with the fundamental principles of our free government, in that they would bring about unnecessary and irritating restrictions upon personal liberties of the individual, and would subject aliens to a system of indiscriminate questioning similar to the espionage systems existing in other lands.[32]

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[28] 1 Stat. 570, 577.

[29] See Field, J., dissenting in Fong Yue Ting v. United States, 149 U. S. 698, 746-750. Cf. 84 Cong. Rec. 9534.

[30] Quoted in Fong Yue Ting v. United States, *supra*, 743.

[31] E.g., H. R. 9101 and H. R. 9147, 71st Cong., 2nd Session; see 72 Cong. Rec. 3886.

[32] The requirement that cards be carried and exhibited has always been regarded as one of the most objectionable features of proposed registration systems, for it is thought to be a feature that best lends itself to tyranny and intimidation. Congressman Celler, speaking in 1928 of the repeated defeat of registration bills and of an attempt by the Secretary of Labor to require registration of incoming aliens by executive order, said: "But here is the real vice of the situation and the core of the difficulty: 'The admitted alien,' as the order states, 'should be cautioned to present [his card] for inspection if and when subsequently requested so to do by an officer of the Immigration Service.'" 70 Cong. Rec. 190.

When Congress passed the Alien Registration Act of 1940, many of the provisions which had been so severely criticized were not included.[33] The Congressional purpose, as announced by the chairman of the Senate sub-committee which drafted the final bill, was to "work . . . the new provisions into the existing [immigration and naturalization] laws, so as to make a harmonious whole."[34] That "harmonious whole" included the "Uniform Rule of Naturalization" the Constitution empowered the Congress to provide.[35] And as a part of that "harmonious whole", under the federal Act aliens need not carry cards, and can only be punished for wilful failure to register.[36] Further, registration records and finger-prints must be kept secret and cannot be revealed except to agencies—such as a state—upon consent of the Commissioner and the Attorney General.

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[33] Congressman Smith, who introduced the original of the bill that as finally adopted became the 1940 Act, said in Committee: "The drafting of the bill is . . . a codification of measures that have been offered from time to time. . . . I have tried to eliminate from the bills that have been offered o the subject those which seemed to me would cause much controversy." Hearings before Subcommittee No. 3 of the House Judiciary Committee, H. R. 5138, April 12, 1939, p. 71.

[34] Cong. Rec., June 15, 1940, p. 12620. Senator Connally made this statement in explaining why it had been found necessary to substitute a new bill for the bill originally sent to the Senate by the House. In detailing the care that had been taken in the drafting of the new measure, he said: "We regretted very much that we had to discard entirely the bill passed by the House and substitute a new bill after the enacting clause. However, we called in Mr. Murphy, of the Drafting Service, who worked with us some 2 weeks every day . . . . We called on the Department of Justice, and had the Solicitor General with us. We called in the Commissioner of Immigration and Naturalization, and together we went over all the existing laws, and worked the new provisions into the existing laws, so as to make a harmonious whole." This Senate version was substantially the Act as finally adopted; the alien registration provisions are title III of a broader Act dealing with deportable offenses and advocacy of disloyalty in the armed forces.

[35] In Federalist paper No. 42, the reasons for giving this power to the federal government are thus explained: "By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State . . . ? Whatever the legal consequences might have been, other consequences would probably have resulted of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States."

[36] That the Congressional decision to punish only wilful transgressions was deliberate rather than inadvertent is conclusively demonstrated by the debates on the bill. E. g., Cong. Rec., June 15, 1940, p. 12621. And see note 37, *infra*.

We have already adverted to the conditions which make the treatment of aliens, in whatever state they may be located, a matter of national moment. And whether or not registration of aliens is of such a nature that the Constitution permits only of one uniform national system, it cannot be denied that the Congress might validly conclude that such uniformity is desirable. The legislative history of the Act indicates that Congress was trying to steer a middle path, realizing that any registration requirement was a departure from our traditional policy of not treating aliens as a thing apart, but also feeling that the Nation was in need of the type of information to be secured.[37] Having the constitutional authority so to do, it has provided a standard for alien registration in a single integrated and all-embracing system in order to obtain the information deemed to be desirable in connection with aliens. When it made this addition to its uniform naturalization and immigration laws, it plainly manifested a purpose to do so in such a way as to protect the personal liberties of law-abiding aliens through one uniform national registration system, and to leave them free from the possibility of inquistorial practices and police surveillance that might not only affect our international relations but might also generate the very disloyalty which the law has intended guarding against. Under these circumstances, the Pennsylvania Act cannot be enforced. Accordingly, the judgment below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[37] Congressman Celler, ranking member of the House Judiciary Committee which reported out the bill, said in stating his intention of voting for the 1940 Act: "Mr. Speaker, judging the temper of the Nation, I believe this compromise report is the best to be had under the circumstances and I shall vote for it . . . Furthermore, I think the conferees have done a good job because the punishment is not too great . . . There must be proof . . . that the alien wilfully refuses to register . . . I drew the minority report against this bill originally, because it provided some very harsh provisions against aliens. Some of the harshness and some of the severity of the original bill have been eliminated . . . I must admit that it is the best to be had under the circumstances." Cong. Rec., June 22, 1940, pp. 13468-9.

SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1940.

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, vs. Bernard Davidowitz and Vincenzo Travaglini. | Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[January 20, 1941.]

Mr. Justice Stone.

I think the judgment below should be reversed.

Undoubtedly Congress, in the exercise of its power to legislate in aid of powers granted by the Constitution to the national government may greatly enlarge the exercise of federal authority and to an extent which need not now be defined, it may, if such is its will, thus subtract from the powers which might otherwise be exercised by the states. Assuming, as the Court holds, that Congress could constitutionally set up an exclusive registration system for aliens, I think it has not done so and that it is not the province of the courts to do that which Congress has failed to do.

At a time when the exercise of the federal power is being rapidly expanded though Congressional action, it is difficult to overstate the importance of safeguarding against such diminution of state power by vague inferences as to what Congress might have intended if it had considered the matter or by reference to our own conceptions of a policy which Congress has not expressed and which is not plainly to be inferred from the legislation which it has enacted. Cf. *Graves* v. *O'Keefe*, 306 U. S. 466, 479, 480, 487. The Judiciary of the United States should not assume to strike down a state law which is immediately concerned with the social order and safety of its people unless the statute plainly and palpably violates some right granted or secured to the national government by the Constitution or similarly encroaches upon the exercise of some authority delegated to the United States for the attainment of objects of national concern.

The opinion of the Court does not deny, and I see no reason to doubt that the Pennsylvania registration statute, when passed, was a lawful exercise of the constitutional power of the state. With exceptions not now material it requires aliens resident in the state, who have not declared their intention to become citizens, to register annually, to pay a registration fee of $1.00, and to carry a registration identification card. It affords to the state a convenient method of ascertaining the number and whereabouts of aliens within the state, which it is entitled to know, and a means of their identification. It is an available aid in the enforcement of a number of statutes of the state applicable to aliens whose constitutional validity has not been questioned, one of which has been held by this Court not to infringe the Fourteenth Amendment. *Patsone* v. *Pennsylvania*, 232 U. S. 138.[1]

The national government has exclusive control over the admission of aliens into the United States but, but after entry, an alien resident within a state, like a citizen, is subject to the police powers of the state and, in the exercise of that power, state legislatures may pass laws applicable exclusively to aliens so long as the distinction taken between aliens and citizens is not shown to be without rational basis. *Patsone* v. *Pennsylvania, supra; Terrace* v. *Thompson*, 263 U. S. 197; *Cockrill* v. *California*, 268 U. S. 258; *Ohio* v. *Deckebach*, 274 U. S. 392, 396, and cases cited. The federal government has no general police power over aliens and, so far as it can exercise any control over them, it must be in the pursuance of a power granted to it by the Constitution.

The opinion of the Court does not support its conclusion upon the ground that in the absence of federal legislation on the subject there is any want of power in the state to pass the present statute. It does not suggest nor could it well do so that in the absence of Congressional action the Pennsylvania statute either by its own terms or in its operation interferes with or obstructs the authority con-

[1] Tit. 34 § 1311.1001, Purdon's Penn. Stat. Ann., prohibiting hunting by aliens, was sustained in the Patsone case, 232 U. S. 138. Cf. Tit. 30 § 240. Other Pennsylvania statutes whose validity have not been passed upon regulate the activities of aliens: Tit. 63, setting forth license requirements for the practice of certain professions and occupations, make special requirements for aliens seeking to practice as certified public accountants (§ 1), architects (§ 22), engineers (§ 137), nurses (§ 202), physicians and surgeons (§ 406), and undertakers (§ 478a). The real property holdings of aliens are limited to 5000 acres of land or land producing net income of $20,000 or less (Title 68, §§ 28, 32). Taxes are to be deducted from the wages of aliens by their employers when the tax collector requests (Tit. 72, § 5681).

ferred by the Constitution on the national government over the national defense, the conduct of foreign relations, its powers over immigration and deportation of aliens or their naturalization. The existence of the national power to conduct foreign relations and negotiate treaties does not foreclose state legislation dealing exclusively with aliens as such. This Court has consistently held that treaties of the United States for the protection of resident aliens do not supercede such legislation unless they conflict with it. See *Ohio* v. *Deckebach, supra*, 395 and cases cited; *Todok* v. *Union State Bank*, 281 U. S. 449, 454 *et seq.*; cf. *Nielson* v. *Johnson*, 279 U. S. 47. It is not contended that the Pennsylvania statute conflicts with any term of any treaty.

The question presented here is a different one from that considered in *Henderson, et al.* v. *Mayor of New York, et al.*, 92 U. S. 259, 273, where the state taxation and registration of all persons entering the United States through a port of the state was held to be a regulation of foreign commerce forbidden to the states by the Constitution, even though Congress had passed no similar legislation. The registration of aliens resident in a state is not a regulation of interstate or foreign commerce or of the entry or deportation of aliens and would seem to be no more an exercise of any power granted to the national government or an encroachment upon it than is a state census for local purposes an infringement of the national authority to take a national census for national purposes. It is the federal act alone which is pointed to as curtailing or withdrawing the reserved power of the state over its alien population.

Title I of the federal statute penalizes certain acts of any persons intended to interfere with, impair or influence the loyalty, morale or discipline of the military or naval forces of the United States. Title II, among other things, provides for the deportation of aliens after conviction and service of sentence for violations of the provisions of Title I. And the evident purpose of the registration provisions of Title III is to aid in the enforcement of the other provisions of the Act and in the prevention of subversive activities of aliens resident within the United States. It requires the registration and fingerprinting of all aliens over fourteen years of age, with exceptions not now material, who are not registered and fingerprinted upon entering the country. Registered aliens resident in the United States are required to notify the Commissioner of Immigration of any change of residence and penalties are imposed for wilful non-compliance.

As construed and applied by the opinion of the Court the federal act denies to the states the practicable means of identifying their alien residents and of recording their whereabouts and it withholds from the states the benefit of the information secured under the federal act except insofar as it may be made available to them on application to the Attorney General.

It is conceded that the federal act in operation does not at any point conflict with the state statute, and it does not by its terms purport to control or restrict state authority in any particular. But the government says that Congress by passing the federal act, has "occupied the field" so as to preclude the enforcement of the state statute and that the administration of the latter might well conflict with Congressional policy to protect the civil liberty of aliens against the harassments of intrusive police surveillance.

Little aid can be derived from the vague and illusory but often repeated formula that Congress "by occupying the field" has excluded from it all state legislation. Every Act of Congress occupies some field, but we must know the boundaries of that field before we can say that it has precluded a state from the exercise of any power reserved to it by the Constitution. To discover the boundaries we look to the federal statute itself, read in the light of its constitutional setting and its legislative history.

Federal statutes passed in aid of a granted power obviously supersede state statutes with which they conflict. *Pennsylvania R. Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 459. See *Kelly* v. *Washington*, 302 U. S. 1, 10. But we are pointed to no such conflict here. In the exercise of such powers Congress also has wide scope for prohibiting state regulation of matters which Congress may, but has not undertaken to regulate itself. But no words of the statute or of any committee report, or any Congressional debate indicate that Congress intended to withdraw from the state any part of their constitutional power over aliens within their borders. We must take it that Congress was not unaware that some nineteen states have statutes or ordinances requiring some form of registration for aliens, seven of them dating from the last war. The repeal of this legislation is not to be inferred from the silence of Congress in enacting a law which at no point conflicts with the state legislation and is harmonious with it.

The exercise of the federal legislative power is certainly not more potent to curtail the exercise of state power over aliens than is the

exercise of the treaty making power. Yet as we have seen no treaty has that effect unless it conflicts with a state statute. The passage of the National Pure Food & Drug Act did not preclude the states from supplementing it by like additional requirements not conflicting with those of the Congressional act. *Savage v. Jones*, 225 U. S. 503. The enactment of federal laws for the inspection, as a safety measure, of vessels plying navigable waters of the United States does not foreclose the states from like inspection of the hull and machinery of such vessels within the state, to insure safety and determine seaworthiness, demands which lie outside the federal requirements. *Kelly* v. *Washington, supra.* The passage of the National Draft and the National Espionage Acts with their penalties for violation, did not preclude a state from making it a misdemeanor for any person to advocate that citizens of the state refuse to aid or assist the United States in carrying on a war. *Gilbert* v. *Minnesota*, 254 U. S. 325; cf. *Halter* v. *Nebraska*, 204 U. S. 34; see also *Reid* v. *Colorado*, 187 U. S. 137; *Carey* v. *South Dakota*, 250 U. S. 118; *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188; *Mintz* v. *Baldwin*, 289 U. S. 346; *Maurer* v. *Hamilton*, 309 U. S. 598, 614. These are but a few of the many examples of the long established principle of constitutional interpretation that an exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be fairly reconciled or consistently stand together". *Sinnot* v. *Davenport*, 22 How. 227, 243; *Kelly* v. *Washington, supra*, 10. A federal registration act designed to aid in enforcing federal statutes and to prevent subversive activities against the national government can stand consistently with a like statute applicable to residents passed in aid of state laws and as a safeguard to property and persons within the state, as readily as the federal and state laws which annually demand two separate income tax returns of the citizen.

The Fourteenth Amendment guarantees the civil liberties of aliens as well as of citizens against infringement by state action in the enactment of laws and their administration as well. Again we are pointed to nothing in the Federal Alien Registration Act or in the records of its passage through Congress to indicate that Congress thought those guarantees inadequate or that in requiring registration of all aliens it undertook to prevent the states from passing

any registration measure otherwise constitutional. True, it was careful to bring the new legislation into harmony with existing federal statutes and to avoid, so far as consistent with its purposes, any harsh or oppressive requirements, but in all this there is to be found no warrant for saying that there was a Congressional purpose to curtail the exercise of any constitutional power of the state over its alien residents or to protect the alien from state action which the Constitution prohibits and which the federal courts stand ready to prevent. See *Hague* v. *C. I. O.*, 307 U. S. 496, 518, 525 *et seq.*

Here compliance with the state law does not preclude or even interfere with compliance with the act of Congress. The enforcement of both acts involves no more inconsistency, no more inconvenience to the individual, and no more embarrassment to either government than do any of the laws, state and national, such as revenue laws, licensing laws, or police regulations, where interstate commerce is involved, which are equally applied to the citizen because he is subject, as are aliens, to a dual sovereignty.

The CHIEF Justice and Mr. Justice MCREYNOLDS concur in this opinion.